

1 GOVERNMENT OF THE DISTRICT OF COLUMBIA
2 Zoning Commission
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8 Public Hearing

9 Case No. 14-13 (Office of Planning - Text
10 Amendments to Chapters 1, 4, 5, 6, 7, 8, 9, 12,
11 15, 19, 26, 27, 29, and 33: Definitions, Use
12 Permissions, and Size Restrictions for Rooftop
13 Penthouses)
14
15
16

17 6:31 p.m. to 9:45 p.m.
18 Thursday, April 30, 2015
19

20 Jerrily R. Kress Memorial Hearing Room
21 441 4th Street, N.W., Suite 220 South
22 Washington, D.C. 20001
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PETER MAY, Commissioner

MR. TURNBULL, Commissioner

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P R O C E E D I N G S

CHAIRPERSON HOOD: Good evening,
everyone. We're ready to get started. Good
evening, ladies and gentlemen. This is the public
hearing of the Zoning Commission for the District
of Columbia for April 30th, 2015.

My name is Anthony Hood. Joining me are
Vice Chair Cohen, Commissioner Miller,
Commissioner May, and Commissioner Turnbull.
We're also joined by the Office of Zoning staff,
Ms. Sharon Schellin, the Office of Planning staff,
Ms. Steingasser and Mr. Lawson.

This proceeding is being recorded by a
court reporter. It's also webcast live.
Accordingly we must ask you to refrain from any
disruptive noises or actions in the hearing room,
including the display of any signs or objects.
Notice of today's hearing was published in the
D.C. Register and copies of that announcement are
available to my left on the wall near the door.

The hearing will be conducted in
accordance with provisions of 11-DCMR-3021 as
follows: Preliminary matters; presentations by
the petitioner; reports of the other government
agencies or the Office of Planning; reports of

1 other government agencies; report of the ANC;
2 organizations and persons in support;
3 organizations and persons in opposition. We will
4 have a presentation this evening by the Office of
5 Planning. They have up until 60 minutes. I'm not
6 sure we need 60, but they will go through their
7 presentation. Organizations, five minutes,
8 individuals three minutes.

9 The Commission intends to adhere to the
10 time limits as strictly as possible in order to
11 hear the case in a reasonable period of time. The
12 Commission reserves the right to change time
13 limits for presentations if necessary. Notice at
14 no time shall be seated.

15 Again, all persons appearing before the
16 Commission are to fill out two witness cards.
17 These cards are located to my left on the table
18 near the door. Upon coming forward to speak to
19 the Commission please give both cards to the
20 reporter sitting to my right before taking a seat
21 at the table. When presenting information to the
22 Commission please turn on and speak into the
23 microphone, first stating your name and home
24 address.

25 Okay, please turn off all beepers and

1 cell phones at this time so not to disrupt these
2 proceedings. At this time the Commission will
3 consider any preliminary matters. Does the staff
4 have any preliminary matters?

5 MS. SCHELLIN: No, sir.

6 CHAIRPERSON HOOD: Okay. Typically, and
7 I probably need to talk about this at a meeting --
8 (Interruption by fire alarm
9 announcement.)

10 CHAIRPERSON HOOD: Okay. All right.
11 Does the new fire chief start tomorrow? So
12 they're trying to get everything in order. Okay.
13 That must be it. Okay. Good.

14 In this announcement, and I'm going to
15 talk to my colleagues about this, I know we've
16 been kind of tossing this around in sense of the
17 decision of the Commission in this case is mostly
18 based exclusively on public record. This is a
19 rulemaking. I don't know where that misnomer came
20 from that you cannot talk about a rulemaking. So,
21 colleagues, you know that's another discussion for
22 a meeting but I think it needs to come out of this
23 statement because actually we can talk about a
24 rulemaking. So that's where I am. I'm must
25 throwing it out there because I -- if you notice,

1 I didn't read that this evening and I didn't do it
2 purposely. So that's more discussion that we can
3 have on that, because I did not personally did not
4 say that you couldn't talk about a rulemaking to
5 the public. So I want to make sure that that's
6 clear, and I want to straighten that up if that
7 has been the misnomer for years. Anyway. Okay.

8 Anything else, Ms. Schellin? That's my
9 preliminary matter. Anything else?

10 Okay. Let's turn it over to the Office
11 of Planning.

12 MR. LAWSON: Thank you, Mr. Chair. Joel
13 Lawson here with the D.C. Office of Planning. I'm
14 going to quickly, or hopefully relatively quickly,
15 go through a quick summary of the current proposal
16 that's before you. The presentation I'm going to
17 give tonight is very much based on the information
18 that came out of your public meeting of a little
19 while ago where you instructed us to advertise a
20 specific set of options for consideration at the
21 public hearing tonight.

22 The information is also consistent with
23 the information that we sent to the Advisory
24 Neighborhood Commissions and posted on our
25 website, and the flow of the information we're

1 going to be presenting relates directly to the
2 Office of Planning report that was dated April
3 20th, for your reference.

4 You know, I'm going to apologize in
5 advance that it's a little bit dry. It's hard to
6 make this really exciting. And it's also a little
7 bit repetitive of some of the information that
8 you've already seen. But it is again, as I said,
9 focused on the options and the permutations that
10 are directly before you.

11 Now there's an awful lot of permutations
12 possible here because there are a lot of
13 alternatives that you're considering. There's way
14 too many for any one text or set of diagrams to
15 illustrate every single permutation. But as I
16 said, these are also the illustrations that were
17 in the public hearing notice and notifications
18 that went out from OP.

19 Just very quickly, to summarize the
20 review process so far, this process of course
21 flows from the Height Act review process that
22 occurred in 2013 and 2014. As part of that
23 process there were a series of public meetings.
24 There was at least one in each ward. I know that
25 was a question of the chair, whether these

1 meetings were held out in the community and they
2 were. It included -- that presentations or those
3 presentations included numerous options and
4 illustrations including ones which would have
5 raised the permitted height in various zones
6 throughout the city. And it also included the
7 option of allowing habitable space within the
8 penthouse. Specifically that was Option 1B that
9 was presented at those meetings.

10 There were a series of meetings, as I
11 said, and briefings to various groups, and
12 hearings before counsel, NCPC, and a congressional
13 public hearing in December of 2013.

14 Those presentations included the modeling
15 study in economic feasibility analysis prepared by
16 the district consultants and all of the images
17 were presented again at the public meetings and
18 posted online, including as I said, Approach 1B,
19 which was to allow penthouse occupancy, habitable
20 occupancy of the penthouse space.

21 The recommendations in the end were to
22 allow human occupancy of mechanical penthouses
23 which are up to one story at a maximum of 20 feet
24 above the Height Act and in the end as it notes
25 here, that's what was signed into law by the

1 president as a modification -- as an amendment,
2 sorry, to the height act.

3 In terms of the Zoning Regulations,
4 typically the regulations are more restrictive
5 than the height act, so if the District wants to
6 take advantage of the Height Act changes in any
7 meaningful way, changes to the Zoning Regulations
8 are also needed. There of course is no
9 requirement that the Zoning Commission amend the
10 Zoning Regulations to conform to the Height Act.
11 But if the Commission feels that it's appropriate
12 to do so, to take advantage of some of those
13 changes, then changes to the Zoning Regulations
14 are required. And of course it was the Zoning
15 Commission who instructed OP to pursue this option
16 in the first place back in 2014. Specifically in
17 July of 2014.

18 So this hearing, the hearing tonight, is
19 based on the matrix of options that were prepared
20 for the Zoning Commission by OP. You reviewed
21 these in February and provided direction for the
22 public hearing notice for this hearing. In the
23 meantime as I noted, OP continued. Outreach is
24 noted in this slide, including sending by mail an
25 e-mail, summaries of the proposals to each ANC

1 with maps specific to that ANC and many
2 illustrations including ones that are in this
3 presentation.

4 We had a few calls about those notices,
5 and some questions on that information. We also
6 provided a lot of background information on our
7 website and our blog site. And this is of course
8 in addition to outreach that was done by the
9 Office of Zoning regarding this public hearing.

10 The existing -- as noted in the report,
11 the current Zoning Regulations are more
12 restrictive than the amended Height Act in terms
13 of uses permitted in the penthouse, penthouse
14 size, and penthouse height.

15 A rooftop penthouse, just for the sake of
16 the audience and people who are maybe watching, is
17 that small rooftop structure containing, under the
18 current regulations, contain uses like rooftop
19 mechanical equipment, elevator or stairwell
20 overruns, and sometimes a room supporting -- in
21 close space, supporting a rooftop deck or terrace;
22 things like storage or washrooms, particularly in
23 our residential zones.

24 Not every building, of course, has a
25 penthouse. In fact most one family dwellings, row

1 houses, and many small commercial or apartment
2 buildings do not have rooftop penthouses.
3 Particularly ones without an elevator or without a
4 rooftop deck.

5 And where they do exist you sometimes
6 don't notice them since the current regulations
7 require that they be set back from the edge of the
8 building below to minimize their visual impact.

9 Where permitted -- or, sorry, if
10 permitted, habitable space in a penthouse could
11 include residential living space, office space,
12 communal recreation space, possibly associated
13 with rooftop terrace, or even commercial space in
14 some instances, such as a lounge or a restaurant
15 on the roof. But we'll certainly get into all of
16 those provisions as we go along.

17 In the current regulations the only form
18 of habitable space permitted within a penthouse is
19 a small amount of auxiliary space associated with
20 rooftop terrace in residential zones. Non-
21 habitable space on the other hand, is enclosed
22 penthouse area that is used for things like
23 mechanical equipment or stair or elevator
24 overruns, and is permitted under current
25 regulations. Excuse me. Excuse me. I'm sorry.

1 The slide before you is just a simple
2 listing of the issues that were before you as they
3 were advertised for this public hearing. As I
4 noted before they are of course highly
5 interdependent. What you do with one of these
6 issues will often impact the impacts or even the
7 applicability of some of the other issues. In
8 many instances we of course advertised
9 alternatives in the public hearing notice as you
10 requested. Those are also laid out in the OP
11 report.

12 The public hearing notice included a
13 caveat that the Commission did not consider this
14 an exclusive list of options or alternatives, but
15 that the Commission would also hear other comments
16 or suggestions from the public and we welcome
17 those comments and suggestions.

18 As part of this presentation and in the
19 OP report, we did raise some additional
20 considerations which, in the presentation are
21 noted as additional alternative, but we of course
22 understand that there are other alternatives that
23 are possible, and which may be raised by the
24 Commission or by members of the public.

25 The first issue is probably the most kind

1 of the lynchpin, and that's the permitted height.
2 The current regulations, the penthouse height of
3 18 foot, six inches maximum is generally
4 permitted. It's permitted in all zones of the
5 District. There are a couple of small examples.
6 The capitol interest overlay, and there are a
7 couple of other overlays which may limit the
8 height of a penthouse, but in the vast majority of
9 the district the permitted height for a penthouse
10 right now is 18 foot, six inches. Although the
11 Zoning Commission has already considered through
12 the Zoning Regulations Review Process, ZRR
13 proposals, to limit the height of penthouses above
14 single family dwellings and row houses. And so
15 that's already something that you've taken
16 proposed action on.

17 So alternative one, as advertised, would
18 reduce the height of penthouses in most parts of
19 the city. Approximately 85 percent of the zone
20 land would have a penthouse height lowered from 18
21 foot, six inches to 10 feet maximum. Enclosed
22 stairwells and elevator access is required to be
23 provided to communal rooftop space in a form of
24 elevator which does not place mechanical equipment
25 on top of the elevator shaft would have to be

1 employed in those instances where rooftop access
2 by the public would be required. And that would
3 be mainly if there was rooftop recreation space.

4 There are some alternatives to the
5 typical elevator that you see that may be able to
6 accommodate that. Side slung elevators or
7 hydraulic elevators, that technology does exist,
8 although I think you may get some testimony on the
9 cost associated with those elevators as well as
10 whether or not they're feasible in all instances.

11 And those would be for under alternative
12 number one, for zones where building height is
13 limited to 50 feet or less, and there's a table on
14 the chart and it's included in your report, which
15 shows which zones those are.

16 Under alternative two, no penthouse would
17 be permitted on top of a single family dwelling or
18 row house. In that case any access to a rooftop
19 would be provided via an uncovered stairwell,
20 typically from a rural landing or balcony. I know
21 that that works because at one point I lived in a
22 row house which had exactly that. So it does
23 work. However, there would be a special exception
24 process that would allow for a penthouse following
25 community and BZA review.

1 Next will be the options for number of
2 stories, and then there are some illustrations of
3 what this would look like. I've included those
4 options after the discussion number of stories
5 because of course height and number of stories
6 proposals are pretty much related.

7 Once again, the current regulations do
8 not limit the number of stories within a
9 penthouse. You've seen some examples of multiple
10 story penthouses already. Typically for obviously
11 right now for -- or sorry, for non-habitable space
12 within a penthouse. The alternatives advertised
13 are to allow two stories within the penthouse
14 wherever a 20 foot high penthouse would be
15 permitted. And but limited -- but otherwise
16 limited to one story. In other words, limited to
17 one story where a penthouse of 10 feet height is
18 permitted. That of course makes sense. It would
19 be pretty difficult to get more than one level in
20 a 10 foot penthouse.

21 Of course taller penthouses would require
22 correspondingly larger setbacks, so it would be
23 smaller in area. A lower penthouse could have
24 more area because of the correspondingly smaller
25 one to one setback requirement.

1 If the Commission decides to limit
2 penthouses to one story for habitable space, you
3 may wish to consider allowing a second level
4 within a penthouse height limit for mechanical
5 equipment, and that's essentially alternative two.
6 This could help to facilitate the desirable use of
7 rooftops for recreation space or other form of
8 habitable space where permitted and would not --
9 would less limit elevator options.

10 The chart, again on this page, shows the
11 number of stories that would be permitted under
12 the two alternatives for different zones. That's
13 the number of stories within the penthouse itself.
14 Note that only some of -- sorry. Note that only
15 some overlays are shown on these charts, and
16 that's because we only showed in these charts the
17 overlays that actually provided some limitation
18 beyond what the base zone would otherwise permit,
19 where the overlay does not somehow limit this
20 provision it would be as per the base or
21 underlying zone.

22 So these are just some maps showing the
23 current and the proposed situation. The map on
24 the left shows, in purple, the areas where a
25 penthouse of 18 foot, 6 inches is currently

1 permitted. So you can see that's pretty much all
2 of the district.

3 On the right the purple is the area that
4 would be allowed a 20 foot height if the Zoning
5 Commission wishes to allow 20 feet in height. And
6 the lighter yellowish kind of color is the area
7 that would be reduced to 10 feet.

8 Some simple sections showing the options
9 for different kinds of buildings. Again on the
10 left is Alternative Number 1, which is a 10 foot
11 penthouse on top of a row house. These two relate
12 to one family dwellings and flats, so row houses,
13 detached dwellings. The dotted line is what is
14 currently permitted under the Zoning Regulations.
15 And on the right-hand side is Alternative 2, which
16 is basically that a penthouse would not be
17 permitted by right.

18 Once we get up into slightly taller
19 buildings these are examples of buildings of 50
20 feet or less. Alternative 1 is a 10 foot
21 penthouse. You can see that it's got a -- it's
22 more area than the current regulations, and that's
23 because of the one to one setback. It would allow
24 to have more area, but the height would be limited
25 to 10 feet, or -- to 10 feet.

1 On the other side is the proposal to
2 allow a 10 foot penthouse, but to allow 20 feet as
3 long as it's one story by special exception. So
4 just kind of comparing the by-right and the
5 special exception mounts, and again the penthouse
6 area would be smaller because of the one-to-one
7 setback requirement.

8 And on taller buildings, Alternative 1
9 would be to permit two stories within a 20 foot
10 height. As you can see it's labeled habitable
11 and/or mechanical space. Under Alternative 1
12 there would be no distinction between those two.
13 The difference in Alternative 2 would be that the
14 upper story, if you wish to permit it, would be
15 for mechanical equipment only, and habitable space
16 would be limited to one story maximum.

17 In terms of uses, once again the height
18 act addresses uses by allowing habitable space
19 above the height act. That was one of the changes
20 to the height act that was recently approved.
21 Right now, however, under zoning, uses within the
22 penthouse are currently limited to mechanical
23 equipment, elevator, or stair overrides, or for
24 residential buildings only, a limited amount of
25 amenity space directly associated with outdoor

1 rooftop recreation space.

2 Other forms of habitable area, such as
3 living, office, commercial, conference space,
4 those kinds of spaces are not permitted within a
5 penthouse.

6 The alternatives proposed are listed up
7 there. They would allow habitable space in taller
8 buildings, generally in the medium to high density
9 zones, but restrict habitable space within the
10 penthouses of lower buildings. The two
11 alternatives are for buildings of -- the
12 restriction would be on buildings of 40 feet or
13 less in Alternative 1. And in Alternative 2 the
14 restriction would be for buildings in zones which
15 allow building of 50 feet or less.

16 The chart shows where these zones --
17 where these different alternatives would apply and
18 how they would apply in these different zones, at
19 the low and the moderate and the higher density
20 zones. If the Zoning Commission does decide to
21 generally not permit habitable space within a
22 penthouse in these zones, either Alternative 1 or
23 Alternative 2, you may wish to consider whether
24 you would allow enclosed recreation space for
25 multi-family buildings or for office buildings

1 within these zones. Those are forms of habitable
2 space, and the zoning regulations, if you wish to
3 allow that, in these more moderate density zones
4 would have to be spelled out in the Zoning
5 Regulations to permit it.

6 Oh, and in a minute we'll also discuss
7 the options for allowing some uses only by special
8 exception, no matter which option you go with.

9 These two maps show the areas under the
10 two options where habitable space would be
11 permitted. As you can see for most of the city,
12 habitable space would not be permitted. But the
13 purple area would be the area where it would be
14 permitted.

15 On the left-hand side, Alternative 1
16 which is 40 foot buildings, and Alternative 2 on
17 the right-hand side, which is 50 foot buildings.
18 The main difference is that on the right more
19 moderate density zones would not allow habitable
20 space, and that would be zones such as R-5-B, C-2-
21 A, and there are some overlays that are cut by
22 this where height is also restricted to 50 feet.

23 You also requested that we put up for
24 public comment, alternatives for whether some uses
25 should be non-permitted by right, but should be

1 permitted only by special exception. Neither
2 alternative of course that we just discussed would
3 allow the introduction in the penthouse of a use
4 that is not permitted in the zone. So if the use
5 isn't permitted by the zone, it wouldn't be
6 permitted in the penthouse.

7 However, some uses when placed on the
8 roof of building could have more impact on
9 adjacent properties, particularly in the lower to
10 moderate density zones. The Zoning Commission at
11 set down requested additional input and comment
12 from the public on this. But you also noted that
13 there were other existing rules and regulations,
14 such as through the Alcohol Beverage Control
15 Board, which may provide appropriate regulations
16 for these type of businesses, so they may not
17 require this special exception relief.

18 For example, alcohol beverage regulations
19 include standards related to hours of operation,
20 noise restriction, control of litter and signage.
21 However, OP is not opposed to making the uses
22 listed in our report and on the slide subject to
23 special exception. This could be in all zones or
24 this could be if the Zoning Commission wished to
25 go that route, perhaps only in some of the lower

1 density zones, the lower and moderate density
2 zones, which tend to be located more proximate to
3 lower density, even lower density residential
4 zones.

5 Penthouse setbacks. This was not
6 something that was impacted by the Height Act
7 changes, but we felt it was appropriate to provide
8 some clarification here. A setback of one to one
9 is required from all exterior walls of the
10 building, both above and below the height act.
11 Although as I said, it was apparent that some
12 additional clarification was needed. You already
13 took proposed action to approve this clarified
14 language as part of ZRR. But the proposal before
15 you now actually expands on those setback
16 provisions, mainly to require a setback from a
17 historic property as noted on the slide.

18 By the way, we're also proposing some
19 language that would more clearly clarify that the
20 setback is measured from the edge of the wall of
21 the roof upon which the penthouse actually sits.
22 We believe that's the intent of the regulations
23 and we want to make sure the regulations clearly
24 state that.

25 Sorry. So there are a series of

1 illustrations here. They're just examples of
2 buildings and the potential penthouse location.
3 Of course if the Zoning Commission retains some of
4 the other penthouse limitations such as the FAR
5 exemption or the one-third rule in some instances,
6 you may not be able to achieve a penthouse of this
7 size of course. But this is just what's showing
8 kind of an envelope within which a penthouse would
9 be permitted. Mainly it's to show where a setback
10 would be required.

11 And in this case before you, for example,
12 setback from the alley, setback from the street,
13 setback from a court that faces on to a street,
14 all of those are some of the options advertised
15 for requiring a setback.

16 Again, just more examples showing
17 instances where the setback would be required.

18 Penthouse area, the current regulations
19 limit the size of the penthouse to one third of
20 the roof area in certain low density zones that
21 are listed here as well as in the cap overlay. In
22 the advertised proposal this limit would be
23 retained in the lower density residential zones,
24 R-1 through R-4, and that of course is assuming
25 that you, you know, under your previous proposals

1 decide to allow a penthouse at all in those zones.

2 However, one of the options the Zoning
3 Commission also -- as I said, was to not allow a
4 penthouse in those zones. So if that was the case
5 then the one-third limit would also go away for
6 those zones because it just wouldn't be allowed.

7 So under this proposal the limit would be
8 removed in some of the zones where it currently
9 applies, C-1, R-5-A, and C-M-1 are the specific
10 ones, and it would be retained in other zones as
11 noted in the chart.

12 I would also note that in the R-5-A zone
13 of course, any multifamily building requires BZA
14 review, so that would -- and that includes a
15 review of the form and character of the building.
16 So whether it provided a penthouse or not, that
17 building would be subject to BZA review under the
18 current zoning regulations and under the proposed.

19 Zoning Regulations currently also include
20 an FAR -- basically an exemption for penthouse
21 space from floor area ratio for the building. All
22 zones, or most zones, sorry, currently have an FAR
23 limit. The exemption -- or sorry, the exception
24 to that is the low density residential zones. And
25 so that the current regulations allow a .37 FAR

1 exemption from the gross floor area ratio, so it
2 allows for that additional area within the
3 penthouse to be excluded from FAR.

4 Of course, when we did our research we
5 found very few examples of buildings that
6 currently approach that .37 for the size of a
7 penthouse. That's not surprising because there
8 really isn't a lot of use for that space. The
9 mechanical space tends to not take up that much
10 space. And so certainly if the Zoning Commission
11 in certain zones were to facilitate the addition
12 of habitable space, we would expect some of that -
13 - more of that space to be utilized in the
14 penthouse.

15 So Alternative Number 1 would remove that
16 exemption all together and basically would exempt
17 penthouse space from FAR. It would allow the one-
18 to-one setback then to establish what the size of
19 the penthouse would be.

20 Alternative 2 is more restrictive. It
21 would exempt mechanical space and depending on
22 which direction you wish to take, potentially
23 communal recreation space within a penthouse from
24 gross floor area, and therefore floor FAR, this
25 would certain allow greater flexibility in the use

1 of the penthouse space in those zones where the
2 Commission would allow habitable space within a
3 penthouse but would count some penthouse habitable
4 -- but would potentially count some penthouse
5 habitable space towards the overall building FAR.

6 So Alternative 1 would allow the greatest
7 flexibility and permit optimal affordable housing
8 linkage while maintaining some appropriate
9 restrictions, i.e. the one-to-one setback. If all
10 habitable spaces counted towards building FAR,
11 which is certainly one of the options that has
12 been raised in discussion, this would very much
13 add flexibility to building massing. In other
14 words there would be slightly more height within
15 which to permit the same density as permitted
16 under the current regulations. But the benefit
17 would be sufficiently small. OP feels that it
18 should not be considered a bonus, so an affordable
19 housing linkage requirement, possibly other than
20 the standard IZ requirement for residential
21 buildings would be at best, limited and
22 potentially ineffective.

23 Penthouse design. There were three
24 aspects to penthouse design that you wanted
25 advertised. So this kind of deals with all three.

1 The first one is the current provision that all
2 penthouses must be of one equal height. BZA
3 relief from this provision is currently the most
4 common form of penthouse relief that is requested
5 and approved by the BZA. So some additional
6 flexibility in the regulations could help to limit
7 that relief. But more importantly could help to
8 limit the bulk of penthouses. But as noted by the
9 Commission, it could also result in penthouses
10 that are more visually complex and busy looking on
11 the rooftop.

12 So Alternative 1 would provide some
13 additional flexibility. This is the one that was
14 first recommended by the Historic Preservation
15 Office at OP. It would allow one height for the
16 penthouse, and whether it was habitable or
17 mechanical space. But it would allow a second
18 height for screening of mechanical equipment which
19 is often much lower and doesn't necessarily need
20 as high -- need to be as high, but under the
21 current regulations does have to be as high.

22 The Alternative Number 2 would be to
23 delete the requirement that penthouses need to be
24 one height all together, and you can see on the
25 illustration that can lead to multiple different

1 heights that would respond to what the internal
2 programming could be. This was not an advertised
3 alternative, but OP feels that if you do wish to
4 not pursue Alternative 2, which would be to remove
5 the requirement that penthouse walls be of any
6 equal height, you may wish to consider whether you
7 allow one height for mechanical equipment, and a
8 second height for habitable space. This would
9 certainly add more flexibility and it may allow the
10 penthouse to be more responsive, as I said, to
11 what the uses are that would be contained within
12 that enclosed space.

13 The second one was the current regulation
14 that walls need to be vertical. Penthouse walls
15 need to be vertical. The advertised text include
16 a provision allowing a penthouse wall that is up
17 to 20 percent from vertical to be considered
18 conforming to this requirement. This, in our
19 opinion, would read as a vertical wall while
20 providing some design flexibility, significantly
21 larger angle resulted in walls that when we looked
22 at it, did not appear to meet the Commission's
23 intent, and could be considered a way around the
24 one-to-one or 45 degree setback requirement.
25 However, I think that you'll be getting some

1 comments from members of the public on this
2 provision and what may be appropriate.

3 We did discuss this one with the Zoning
4 Administrator as we noted. He seemed comfortable
5 with providing a limit like this. He didn't
6 suggest what that limit should be, but seemed
7 comfortable with being able to enforce the
8 requirement that the Zoning Commission feels is
9 appropriate.

10 The third one was not part of our
11 original proposal, but the Zoning Commission
12 raised the issue of code compliant stairwells at
13 the February meeting. Requiring remote stairwells
14 to -- that are required by the building code to be
15 within the same enclosure as the remainder of the
16 penthouse can result in penthouse structures that
17 are larger and potentially more expensive to
18 construct, although again, relief from this
19 provision is before the Board of Zoning adjustment
20 is also fairly common, and it is special exception
21 relief under the current regulations.

22 However, requiring that they all be in
23 one enclosure can limit flexibility regarding the
24 use of the rooftop, whether it's for recreation or
25 green roof, or other purposes.

1 So Office of Planning, as I noted,
2 support of this provision, the one thing that we
3 may want to ask the Zoning Commission to clarify
4 is whether this would be for one remote stairwell,
5 or whether you'd be comfortable with more than one
6 remote stairwell being not enclosed within the
7 same penthouse as the rest of the mechanical
8 equipment and habitable space if you permit it.

9 Affordable housing linkage for penthouse
10 space. This was, again, not part of what the
11 Height Act changes addressed, but it's one that
12 certainly the Zoning Commission discussed very
13 early on, and to some extent was even part of the
14 discussion when the discussions regarding the
15 Height Act itself were underway in 2013 and 2014.

16 Because the ability to provide habitable
17 penthouse space in a nonresidential building is
18 currently very limited, the Zoning Regulations do
19 not currently include a housing linkage and
20 requirement of course for this space, although
21 inclusionary zoning would be required, even under
22 the current regulations for any new residential
23 space in zones in parts of the city where IZ
24 applies.

25 There is no affordable housing linkage

1 for nonresidential space. However, there
2 currently, in the current regulations, both the
3 comprehensive plan and the Zoning Regulations,
4 there are requirements for a housing linkage for
5 discretionary gains of nonresidential density.
6 This is through the PUD process as well as through
7 the council approved street and alley closing
8 process.

9 The proposal that we had brought forward,
10 I'm not going to go into a lot of detail here, but
11 it is based very much on that housing linkage
12 program that exists for those other forms of
13 discretionary space.

14 Input from the affordable housing
15 advocates is being generally positive to this
16 provision. And input from the building industry
17 is also being generally positive. Or at least
18 understanding of this provision, provided that the
19 provision of habitable space is not overly
20 restricted, OP feels that this could actually
21 result in noticeable affordable housing
22 contributions. Some of those calculations were
23 provided in the earlier OP report prior to your
24 last public hearing on this requiring an
25 affordable housing contribution that is both

1 deeper and broader than is currently applied
2 through the current IZ program would very much
3 increase the impact of this provision and would be
4 consistent with District affordable housing policy
5 and objectives.

6 Currently relief from many forms of
7 rooftop structure provisions is permitted by
8 special exception. The Zoning Commission did not
9 indicate they wanted that to go away, but you did
10 indicate that you wanted some clarification, so
11 that clarification language is provided here.

12 In terms of PUD modifications, the Zoning
13 Commission also had advertised a provision that
14 would permit a consent calendar minor modification
15 review, proposed modifications to approved PUDs.
16 No matter what the Commission might approve for
17 modifications to the penthouse provisions, the odd
18 thing is the current PUDs, whether they're
19 constructed or approved, could not take advantage
20 of those changes, unlike a by-right building could
21 because of course their building design is tied to
22 their PUD approval.

23 As such, these buildings would have
24 actually less access to these changes than other
25 non-PUD sites. The consent calendar program would

1 allow for a straight forward, and we think
2 appropriate, process that would -- but one that
3 would still ensure meaningful opportunity for
4 public comment.

5 Of course future PUD applications would
6 be able to incorporate any changes you're
7 proposing into their original application so this
8 really does apply to existing PUDs and approved
9 PUDs as opposed to future PUD applications.

10 And as with any consent calendar item,
11 the Zoning Commission would always have the
12 authority to remove the item from the consent
13 calendar and hold a public hearing if you felt
14 that was appropriate.

15 Last slide. Definitions, you asked for
16 some clarity on the definitions. I think that's
17 fairly straight forward. Parking, the current
18 regulations for all of our multi-family --
19 essentially all of our multi-family zones, exempt
20 penthouse space from parking requirements. That
21 of course is because a penthouse space is really
22 limited to mechanical and support space, which
23 typically does not generate additional parking
24 demand. The exception, oddly enough, are the
25 residential zones, R-1 through R-5, where even

1 under the current regulations if you allow a
2 habitable residential space in the penthouse, the
3 parking provisions would apply to that space.

4 However, we're supportive of Alternative
5 2. We think it's appropriate for new space that
6 could generate additional parking demand to be
7 subject to the same parking requirement as other
8 space within the building.

9 And that concludes our presentation.
10 We're certainly available for questions, and we're
11 looking forward to hearing the public comments.
12 Thank you.

13 CHAIRPERSON HOOD: Okay. Mr. Lawson, I
14 want to thank you for the presentation. You and
15 the Office of Planning, Ms. Steingasser, we
16 appreciate it. I'm going to ask that my
17 colleagues -- and typically we like to do this in
18 rulemakings, that we hold our questions. Again,
19 this is something we ask for to hear from the
20 public, so I would like to go straight to the
21 public witness list first and then we'll ask our
22 questions after we get those comments. So I hope
23 everybody took good notes or hopefully remember
24 your questions.

25 Let's go first with those who are

1 proponents.

2 MR. TURNBULL: Mr. Chair, I wonder if I
3 might?

4 CHAIRPERSON HOOD: Yes.

5 MR. TURNBULL: I just want to compliment
6 Mr. Lawson on being able to continue talking and
7 keeping the same tone of voice and being very
8 clear and lucid. I know he had to go to water,
9 but I mean he was just -- excellent presentation.
10 I thank you.

11 MR. LAWSON: I hope I didn't put too many
12 people to sleep.

13 MR. TURNBULL: No, no, you didn't.

14 CHAIRPERSON HOOD: I wasn't going to say
15 this, but when I saw him reaching for the bag I
16 was wondering what he was getting ready to drink.
17 I was going to tell him to pass me some, but it's
18 water. So anyway. Again, thank you, Mr. Lawson
19 and again Office of Planning.

20 Let's go straight to the public
21 witnesses. I'm going to start with proponents
22 first. Mr. Christopher Collins, DCBIA.

23 Let me ask this -- I didn't ask this.
24 I'll just take the privileges. Does anybody have
25 an issue with moving it in that direction? Okay.

1 We're going to be on the time clock, Ms. Schellin
2 when we get to our questions. No, I'm just
3 joking.

4 Okay. Chris Collins, Norman Glasgow,
5 Merrit Drucker, Lindsley Williams, Eric Smart,
6 Jonathan Kardon, hopefully I pronounced that
7 right, and Elinor Bacon. I think I have seven,
8 and I think they're all here. Is there one other
9 person here who is in support who would like to
10 come -- who is a proponent who would like to come
11 forward?

12 (No audible response.)

13 CHAIRPERSON HOOD: Okay. Why don't we do
14 this? I know I called Mr. Collins first but I'm
15 going to start from my left, your right, and you
16 may begin and we're going to -- okay. Mr. Smart,
17 if you could start?

18 MR. SMART: Thank you. Eric Smart with
19 Bolan Smart Associates. We're real estate
20 consultants in the District of Columbia. I spoke
21 with you back in November when we submitted and
22 commented on our evaluation of some of the
23 feasibility questions.

24 I provided a letter here for the record
25 and I'm going to read from it briefly. So do I

1 get a chance just to read directly, but I will do
2 that. And thank you again for letting me speak to
3 you again on this matter.

4 I mentioned that last fall we provided a
5 feasibility and economic analysis pertaining to
6 the proposed alternatives and we focused on
7 economic incentives and disincentives to promoting
8 affordable housing and District tax revenues at
9 that time.

10 I'd like now to address the following
11 subset provisions regarding some of the economic
12 related aspects of proposed Alternative 1, now
13 being considered and which you just had an
14 overview on. I'm going to mention them by the
15 sections which is in your proposed documentation,
16 and I'll describe what that pertains to. I have
17 about four or five items here.

18 Section 4118, and these of course relate
19 to the economic elements. This is addressing the
20 FAR question of whether it includes the -- it
21 should be counted as part of the gross floor area.
22 Separating the gross floor area count from the
23 underlying FAR adds some economic incentive. And
24 what I mean by that, it's for promoting the
25 objective of having this occur so that affordable

1 housing can be supported. And importantly we're
2 not capped at .37, means that there is no
3 artificial barrier to maximizing the benefits when
4 the one-for-one setback limits are already
5 achieved.

6 Section 411.18, this is the second --
7 possible second level in the penthouse. The same
8 comment as above applies to the permitted uses of
9 a possible second level penthouse if otherwise
10 permitted under the Height Act, allowing for
11 market based uses to a potential second level will
12 enhance the possible economic incentive and
13 therefore advance the affordable housing
14 objectives, not to mention adding to District
15 general revenue tax proceeds.

16 Section 411.2, this has to do with
17 approvals. Allowing penthouse changes to be
18 approved as a minor modification to previous PUDs
19 is critical to implementation since the expense of
20 underwriting a full zoning process may not be
21 economically warranted with time and cost impacts
22 for others that would be part of the approval
23 process.

24 Section 414.13, this has to do with the
25 housing production trust fund contribution. The

1 50 percent contribution to the AHTPF if consistent
2 with avoiding creating a development disincentive.
3 So what that means is that if it was exceeding
4 that our analysis before had illustrated that that
5 gets into a disincentive category. The concept
6 provides for flexibility and maximizing the intent
7 of directing resources towards providing for
8 affordable housing.

9 Lastly, Chapter 26, this refers to the
10 inclusionary zoning elements. I have two points
11 to address here. First, an alternative suggestion
12 regarding expanding the IZ provisions to provide a
13 deeper level of affordability at 50 percent AMI
14 rather than 80 percent, presents a serious
15 economic hurdle to nonstick built construction,
16 that being concrete frame and higher buildings.

17 I have attached this testimony on the
18 last page there, a supplemental Table 2 that
19 mirrors our feasibility analysis from last
20 November that demonstrated a minor development,
21 positive return, assuming the 80 percent AMI
22 income cap. Imposing a 50 percent AMA (sic)
23 requirement reduces the developer return
24 essentially to zero, which given the overall risk
25 of development is insufficient to secure

1 financing.

2 Second, it is important that the ability
3 to contribute 50 percent of the assessed FAR value
4 to the housing production trust fund should also
5 be available for residential projects proposed for
6 commercial projects. This is due -- concern is
7 due to A., the limited amount of floor area that
8 may be available for residential use in the
9 penthouse, and B., under the IZ provision in many
10 instances the available gross square footage will
11 not add up; it won't be enough to comprise one
12 unit, or certainly not a whole unit and multiples
13 if there was more than one unit could be provided
14 for. Thank you.

15 CHAIRPERSON HOOD: Okay. Thank you.
16 Next?

17 MR. KARDON: Good evening. My name is
18 Jon Kardon. I am Senior Development Manager at
19 Level Two Development and have been with the
20 company for nearly 10 years. Level Two's
21 portfolio consists of six mixed use residential
22 projects ranging from 150 to 500 units, located in
23 neighborhoods throughout the District, including
24 14th Street, Tacoma, and Union Market.

25 I'm testifying in support of the proposed

1 text amendments to the rooftop penthouse
2 regulations because I believe these changes will
3 support the city's ongoing efforts to provide more
4 housing supply and increase the pipeline of
5 affordable housing.

6 I encourage the Zoning Commission to vote
7 in support of the proposed text amendments, and to
8 ease the penthouse restrictions with maximum
9 leeway. I am supportive of the proposed
10 amendments allowing for an increased height of 20
11 feet, and up to two stories of habitable space
12 when permitted by the Height Act.

13 I support the proposal to count the
14 portion of the penthouse that is dedicated to
15 dwelling units towards the existing inclusionary
16 zoning set-aside requirement. I am also
17 supportive of other measures to ease penthouse
18 regulations, such as deleting the requirement that
19 penthouse walls be of equal height and exempting
20 the enclosed penthouse area from building FAR,
21 allowing the one-to-one setback and the one-third
22 of roof area limitation to dictate the penthouse
23 size.

24 With these modifications developers and
25 architects will have a variety of options to make

1 use of penthouse space, including creating
2 penthouse units, offering rooftop amenities, and
3 making use of second stories of penthouses for
4 two-story residential units, two-story amenities,
5 or for mechanical areas. These uses can be
6 implemented without disruptions to our capital
7 city skyline.

8 By opening up these opportunities the
9 District would see a direct increase in the
10 creation of affordable housing through the
11 applicable inclusionary zoning set-aside
12 requirement. In addition the resulting increase
13 in the pipeline of housing supply would help
14 balance out the continued demand for housing in
15 the city, effectively easing pressures on market
16 rate housing prices. In addition, by opening up
17 opportunities to activate penthouses with
18 habitable dwelling units and amenity spaces, D.C.
19 would be able to compete on a grander scale with
20 other metropolitan areas to attract new residents
21 that seek a special place to call home.

22 While I am supportive of applying the
23 existing inclusionary zoning set-aside requirement
24 to the penthouse dwelling unit areas, I am opposed
25 to the alternative proposal requiring that the

1 affordable housing set-aside be provided at 50
2 percent AMI.

3 As you are aware the D.C. council
4 recently held hearings on the inclusionary zoning
5 regulations. And the Zoning Commission will
6 likely contemplate amendments to these regulations
7 later this year. I believe that any linkage of
8 the affordable housing set-aside should continue
9 to be zone specific and construction type specific
10 at this time, and should be thoughtfully reviewed
11 as a comprehensive policy by the Zoning Commission
12 and amended as needed.

13 If a 50 percent AMI inclusionary zoning
14 set-aside were to be required for the attributable
15 penthouse dwelling unit square feet across all
16 zones and construction types, there is a great
17 risk that developers may shy away from
18 constructing dwelling units on penthouse spaces to
19 avoid the fiscal financial impact of the 50
20 percent AMI set-aside. This effect would defeat
21 the goals of providing more housing supply and
22 increasing the pipeline of affordable housing.

23 With the proposed text amendments to the
24 rooftop penthouse zoning regulations, the Zoning
25 Commission should seize the opportunity to

1 encourage developers to provide more housing and
2 affordable housing to meet the demand of our fast
3 growing city and allow for market driven creative
4 uses to activate habitable penthouse space. Thank
5 you for your time and consideration.

6 CHAIRPERSON HOOD: Thank you. Next.

7 MS. BACON: Good evening, Chairman Hood
8 and members of the Zoning Commission. My name is
9 Elinor Bacon and I am President of E. R. Bacon
10 Development. I have worked for 40 years in the
11 field of urban revitalization, community
12 development, and housing, market rate, affordable,
13 and mixed income, in the public and private
14 sectors, and I am pleased for the opportunity to
15 testify under opposed amendments to the penthouse
16 regulations that will implement the amendments to
17 the 1910 Height Act.

18 I strongly urge the Commission to adopt
19 the proposed regulations. They will spur
20 increased utilization of rooftops in a manner that
21 for a city of limited land resources will make our
22 buildings more efficient. Previously unusable
23 space will be devoted to productive purposes and
24 will enhance the aesthetics and the livability of
25 the city.

1 There will also be significant public
2 benefit since a portion of the economic value of
3 the newly usable space will be captured to provide
4 needed affordable housing resources. Allowing and
5 encouraging habitable space on the roof will
6 encourage developers and property owners to clean
7 up those areas so they are useful and attractive,
8 both to occupants and guests of those buildings,
9 be they residential or commercial.

10 I believe that the regulation should
11 provide maximum flexibility of design and
12 configuration of the rooftop structures, including
13 variation in the heights of these structures,
14 provided they do not exceed 20 feet in height,
15 sloped walls and variation in the number of
16 penthouses without a requirement to artificially
17 connect them.

18 In addition to giving new life,
19 usefulness, and value to our city's rooftops, I
20 agree that an appropriate proportion of the
21 economic worth created should contribute to the
22 production of housing that is affordable. It is
23 critical, however, to achieve the correct balance
24 between private and public benefit; a balance that
25 truly incentivizes developers to make productive

1 uses of penthouses and does not impose
2 unreasonably onerous requirements that could
3 result in little or no change to the status quo.

4 In the case of residential buildings I
5 believe that the requirement should be simple,
6 paralleling those of IZ, with the same mix of 50
7 percent and 80 percent AMI, and should also allow
8 payments to the Housing Production Trust Fund in
9 lieu of providing affordable housing units.

10 In the case of non-residential buildings
11 I believe that the proposal to allow as an
12 alternative to producing affordable housing, that
13 50 percent of the assessed value of the new space
14 be attributed to the Housing Production Trust Fund
15 is a reasonable standard.

16 I am excited by the prospect of an
17 enhanced roof experience and the revitalizing
18 effect that it will have on the District as a
19 result of implementing the proposed amendments,
20 aesthetically, economically, and socially. Thank
21 you. I'll be happy to answer any questions.

22 CHAIRPERSON HOOD: Okay. Thank you.
23 Next.

24 MR. DRUCKER: Good evening Commission
25 Members. My name is Merrit Drucker and I'm here

1 this evening representing the Southwest Business
2 Improvement District. We are a new business
3 improvement district formally authorized by the
4 District of Columbia late last year and we are now
5 in the process of launching our initial work
6 program.

7 The Southwest bid encompasses most of the
8 near Southwest quadrant of the District. Our
9 borders are Independence Ave. to the north, Main
10 Avenue, and M Street Southwest, and the waterfront
11 to the south and 12th Street Southwest to the
12 west.

13 We have been following, with great
14 interest, discussion of the Height Act, and with
15 our testimony here this evening we want to urge
16 support of those amendments that encourage
17 innovative design, allow for the full utilization
18 of the penthouse, and ensures a PUD process that
19 is expeditious.

20 This evening we offer our comments for
21 your consideration on five specific amendments.
22 These are, first Section 411.6, to allow penthouse
23 walls of various heights which would come under
24 Alternative 2 of the Office of Planning draft.
25 The ability to have sloping roof structures, so

1 long as they are set back one to one from the
2 exterior wall should support innovative design,
3 and there is no reason to limit them to a 20
4 percent deviation from vertical.

5 Second, Section 411.8, Alternative 1,
6 which is consistent with present practice at the
7 floor area of penthouses is not counted in the
8 overall FAR of a building.

9 Third, Section 411.18, Alternative 1,
10 which allows for two stories with penthouse use,
11 allows full utilization of the penthouses but
12 continues the protection afforded by the 1910
13 Height Act as amended.

14 Fourth, Section 411.20, the PUD process
15 should be structured as to make utilization of the
16 roof structures and penthouses for alternative
17 uses as expeditious as possible.

18 Finally Sections 537.2, 639.2, 777.2,
19 936.2, and 1811.2. We also support the adoption
20 of Alternative 1 because penthouse floor area
21 should not be included in parking calculations in
22 order to avoid negative impacts on existing
23 buildings that may wish to beautify and occupy
24 their penthouse space, but have practical
25 restrictions on expanding parking capacity.

1 We feel that these five sections, amended
2 as we have suggested, will more strongly encourage
3 utilization of these rooftop spaces, ensure the
4 highest design standards, and maximize the
5 benefits of this new opportunity as envisioned in
6 the Office of Planning Height Act petition. Thank
7 you for your time this evening.

8 CHAIRPERSON HOOD: Okay. Thank you.
9 Hold on one second.

10 (Pause.)

11 CHAIRPERSON HOOD: Okay. Sorry. I just
12 wanted to make sure I had a copy of your
13 testimony. Okay. Next. I didn't want to
14 interrupt you.

15 MR. DRUCKER: Oh, thank you.

16 CHAIRPERSON HOOD: Even though I did, but
17 I said well let me hold on tight. Okay. Next.

18 MR. GLASGOW: Thank you. Good evening,
19 Members of the Commission. For the record my name
20 is Norman M. Glasgow Jr., the law firm of Holland
21 and Knight, here in support of the adoption of the
22 proposed roof structure penthouse regulations with
23 some comments and clarifications.

24 We have a written document that we've
25 submitted for the record. My comments are based

1 on that and I'll just hit some highlights and
2 these comments follow the order of the Office of
3 Planning report and their submission of April
4 20th.

5 First under Roman Numeral III, Item 1, we
6 continue to support OP's recommendations for the
7 R-1 through R-4 zones. With respect to the R-5-B
8 and C-2-A zones we believe you will find that in
9 order to permit ADA roof access with conventional
10 elevator system, the elevator override itself will
11 need to be approximately 15 feet. So we support
12 the DCBIA comments in that regard.

13 Section 3.B, concerning lounges, bars,
14 and restaurants where the building height is
15 limited to 50 feet, we recommend that the special
16 exception provision apply where the zone abuts a
17 residential -- where the proposed building abuts a
18 residential zone. If it's in an area where
19 there's several squares and blocks and that
20 shield, we don't believe that the special
21 exception is necessary. And was referenced by the
22 Office of Planning, the ABC board looks at issues
23 such as noise, hours of operation, and things like
24 that. But we do understand where you have this
25 type of use butting right up against a residential

1 zone that there would be a different set of
2 circumstances.

3 7A, we support maximizing flexibility in
4 penthouse design, and number once the one to one
5 setbacks are met.

6 With respect to Section 8A, dealing with
7 the inclusionary zoning and affordable housing, we
8 generally support Section 414 with three
9 clarifications. First Section 414 applies to
10 nonresidential buildings as mentioned at Page 17
11 of the OP report. We think that maybe the
12 language can be clarified a little bit there.
13 Second, we believe that communal rooftop space for
14 the occupants of the buildings should be exempt
15 from IZ requirement. If it's gathering space,
16 observation space, a fitness center for those that
17 are in the building, we think that that's similar
18 to those type of uses within a residential
19 building, then those should be exempt.

20 But if it's used for a bar, lounge,
21 offices, a conference center, those type of
22 things, then we understand that those should be
23 subject to the IZ requirement. So the use will
24 dictate whether or not the IZ comes in.

25 Third, clarification that the first

1 thousand square feet is exempt. Several clients,
2 particularly those with existing buildings are
3 concerned that unless there is not a baseline for
4 them to gain something by going up to the roof, no
5 matter what the proposed use is, there has to be
6 some incentive for them to go up and change their
7 buildings around the existing buildings to get
8 that additional access up there. Otherwise they
9 don't think it will be feasible and the existing
10 buildings will not be changed.

11 Next, with respect to Section 8B, we
12 believe the revised language is consistent with
13 testimony and discussion with Zoning Commission
14 members that I had when I testified in November of
15 2014. We certainly need flexibility, though, to
16 be able to contribute to the Housing Production
17 Trust Fund as was commented on by Mr. Smart. If
18 it's a very small piece, like if you've got five
19 or 7,000 square feet up there, and you've got 400
20 square feet or whatever under the -- four or 500
21 square feet under, whether it's 8 percent or 10
22 percent, you need to have an ability rather than
23 having a third of a unit required, something like
24 that, to be able to say okay, I can take the 50
25 percent assessed value and write a check. There's

1 still a contribution. We're not trying to get out
2 of that. It's just the economics and the
3 difficulty in dealing with some of these
4 potentially very small spaces.

5 Lastly, I would hope that the Zoning
6 Commission if it feels that it can do so, conclude
7 these proceedings in a manner that they feel
8 comfortable with. And if there are more time
9 needed on certain issues, we have major projects
10 that are under construction right now. I think
11 you all are familiar with the Wharf. We are
12 getting to be concerned that as time goes on we
13 may be in a position where we're not able to take
14 advantage of these because, just, you have to make
15 plans in advance. Particularly when you're under
16 construction.

17 So if there are those areas of the city,
18 those zoning districts where the Commission feels
19 that it can move forward while there be additional
20 consideration of other areas, that that be done,
21 or that there be a process set forward where if
22 you've got an existing PUD or something like that
23 where you can come back in while this is under
24 consideration. We think some flexibility should
25 be thought about in that regard. And thank you

1 for the opportunity to testify.

2 CHAIRPERSON HOOD: Okay. Thank you.

3 Next.

4 MR. COLLINS: Good evening. I'm
5 Christopher Collins with Holland and Knight. I'm
6 here tonight as counsel to D.C. Building Industry
7 Association. We've submitted a letter dated April
8 30th and I believe that you have it. I have extra
9 copies in case you need it. We make 12 points.
10 I'd like to just address five of them.

11 First on penthouse height, which -- and
12 I'm sorry. We followed the OP report in our
13 comments. Item number one from the OP report,
14 penthouse height, we do believe that having
15 accessible rooftop space in the 50 foot height
16 zone, specifically the R-5-B and C-2-A, is a
17 desirable thing and we agree with OP's analysis on
18 that issue.

19 We have found in talking to elevator
20 consultants and representatives and manufacturers
21 that there is no elevator that can fit in a 10
22 foot penthouse. Even a hydraulic elevator needs
23 space above it. And so you, and those of who when
24 you sit and see PUDs and those of you who have sat
25 on BZA and seen projects in the C-2-A, R-5-B

1 zones, you've seen elevator penthouses of a height
2 maybe 16, maybe 17 feet. The elevator
3 manufacturer's and the consultants suggest that 18
4 and a half feet is necessary. There have been
5 projects with less but I'm here just to say that
6 in no event can you get an elevator within a 10
7 foot high penthouse.

8 And we urge that you change, or you look
9 at a different way. We've suggested some
10 alternative language to allow elevator access, a
11 penthouse of a sufficient height for access to a
12 rooftop in a 50 foot zone.

13 Secondly, Item 7B of the OP report. DCBI
14 supports a maximum slope or angle of 45 degrees
15 for penthouse walls, rather than a maximum of 20.
16 And one example that many of you have seen, and we
17 have certain done it administratively at the
18 Zoning Administrator, is that when you have a
19 stairway that's at the end of a hallway that goes
20 up to the roof and rather than shift the stairway
21 in the top floor in-board so that you can have a
22 one for one setback in a very vertical kind of
23 stair tower, or stairway penthouse, that you can
24 allow it to come up the edge of the building and
25 sit back at a 45 degree angle, therefore meeting

1 the spirit and intent of the Zoning Regulations as
2 they currently exist, to allow a stairway at the
3 end of the building, end of a corridor, to go up
4 to the roof for rooftop access.

5 So we've had those examples elsewhere and
6 we've used them, both administratively and I think
7 sometimes even at the BZA when we've had more than
8 one roof structure, more than one stairway tower,
9 going up to the roof to satisfy an accessibility
10 requirement on the rooftop.

11 Item 8A, affordable housing linkage,
12 Section 414, there was some confusion there.
13 Maybe it's only confusion on my part, but the OP
14 characterized this as applying only to
15 nonresidential buildings. As written it does not
16 apply only to the residential buildings. It
17 applies to all buildings. It applies to
18 nonresidential space within penthouses, and I
19 think maybe the easiest way to take care of it is
20 to retitle Section 414.

21 That's probably the best fix on that.
22 But also we would like to -- in penthouse
23 nonresidential gross floor area, that definition
24 in the regulation, we'd like to have added back
25 that which we testified to back in November, and

1 that is to add back the phrases, and it's in my
2 testimony, recreation space accessible to all
3 occupants of a building, and space accessible to a
4 rooftop deck such as storage, restrooms and change
5 rooms. These were taken out of the definition of
6 what constitutes penthouse nonresidential gross
7 floor area. We think they should be put back in.
8 We don't think that there should be -- that
9 general communal space should generated a housing
10 linkage requirement if its space is usable,
11 accessible as an amenity to the people in the
12 building.

13 Item 9, the special exception criteria.
14 The definition or clarification of the term,
15 "operating difficulties." I have a concern about
16 that. Or we have a concern about that, and it
17 goes back to a legal maxim that we learned in the
18 early Latin, and I don't know why, but the maxim
19 is *inclusio unius est exclusio alterius*. That
20 means if you, by example include one example, that
21 means you are by statutory construction, excluding
22 other examples. So rather than saying, "such as,"
23 and I understand the point of trying to clarify,
24 but rather than say "such as" it would be better
25 to say, "including but not limited to."

1 The BZA has looked at this, this BZA
2 special exception has been on the books since
3 1958, the BZA has looked at many, many different
4 examples, and it's really case-specific/site-
5 specific. So I would encourage that either you
6 either not include the clarifying language. Or if
7 you do, make it including but not limited to.

8 And the last item, I know my time is up,
9 is at the very end of our letter, Section 411.16,
10 we urge that you adopt or take a look at and
11 consider the point that we made back in November,
12 which I've reiterated back in the last page of our
13 letter, and this goes with regard to exhaust vents
14 up to the roof, the old days they used to be
15 skinny exhaust vents. They talked about gooseneck
16 ducts. Well, the vents now are a lot bigger than
17 that. They're not skinny ducts anymore. They're
18 big ducts, and they need to be addressed in the
19 modern regulation. So I urge you to take a look
20 at that last section and consider that in your
21 deliberations. Thank you very much.

22 CHAIRPERSON HOOD: Okay. Thank you.
23 Next.

24 MR. WILLIAMS: Good evening, Mr.
25 Chairman. My name is Lindsley Williams. I am

1 writing from my home address. I'm down here in
2 support of the overall thrust of this case, as I
3 have been since the beginning of penthouse cases
4 in this room. Or in rooms that were like this
5 before.

6 Today I simply want to generally urge you
7 to move forward, which is the thrust of everybody
8 here, with the case that's testifying at the table
9 right now to move forward and get these
10 regulations into effect. And with that I want to
11 turn to a subject you've already heard about from
12 Mr. Glasgow and Mr. Collins and others, having to
13 do with elevators. And what I've tried to do is
14 to basically show you on the back side of
15 testimony, three charts. This is elevator 101.
16 And it's to demonstrate why with typical forms of
17 elevators you simply can't get into it and get off
18 on a roof and get it done in 10 feet. The only
19 way you're going to be able to get a 10 foot
20 override and be able to have an elevator is when
21 the elevator stops at the floor below the roof and
22 doesn't rise. Then the box and all the stuff that
23 you need can fit within the 10 feet.

24 But if you intend to ride the elevator up
25 to the roof, you simply can't get there and I

1 think you're going to find that even with the
2 hydraulics and so on, which are terrible elevators
3 as other testimony to, but you're going to find
4 that you simply need to provide more space and
5 I've suggested a series of metrics in my text,
6 which explain it in detail. The DCBIA material
7 gives you that and more in spades. You need to
8 have more relief.

9 There's a little addendum to my remarks,
10 and that is that although all the diagrams that
11 I've showed you, show a flat roof, which is the
12 way they're typically designed. I could well
13 imagine elevators, trying to get people up to a
14 flat rooftop in a building that is historic, that
15 has as sloped roof itself. And what I would like
16 to see you do as a matter of accommodation is to
17 say that the Zoning Administrator could look at
18 that, and if the building already has a roof that
19 is sloped and you want to put a little cap on top,
20 go ahead. You don't have to come down to get a
21 variance or a special exception. It's just part
22 of the design process, and that might even be
23 something HPRB would comment on.

24 The last thing I would say is that I've
25 gone through the regulations that are proposed in

1 many other areas and I'm hoping you will leave the
2 record open. I would like to listen to all the
3 comments that come in from this table and from the
4 table that comes, and from your questions, and
5 within a week or so get in a final letter on the
6 subject and wish you God speed. Thank you.

7 CHAIRPERSON HOOD: Okay. I want to thank
8 you all for your testimony, and we appreciate you
9 taking time to come down and give us your views on
10 this particular topic. But I'm going to open up,
11 up here. Do we have any questions or comments, or
12 follow-ups. Commissioner May?

13 MR. MAY: Sure. So I just have a few
14 questions and I'll start with Mr. Kardon. And,
15 you know, any number of people at this table could
16 probably answer these questions.

17 But essentially you argued that you want
18 to have maximum flexibility and two stories and no
19 limit on the footprint and everything else. So
20 basically the maximum free penthouse footprint
21 possible. Right? Because that's going to
22 generate the most affordable housing at 80 percent
23 AMI.

24 MR. KARDON: Of course. To have the
25 maximum creativity to be able to fit whatever we

1 choose to fit in that area.

2 MR. MAY: Okay. Well, I mean, and the
3 most cynical view of this is that what you're
4 going to do is jam it with very high priced two-
5 story penthouse units, right?

6 MR. KARDON: Depends on the location and
7 it depends on the needs of the building.

8 MR. MAY: Certainly. But all I'm saying
9 is that the most cynical view of this is that it's
10 basically just a whole lot more money in the
11 developer's pocket because you're going to be
12 building a lot of high priced space on the
13 rooftops, and basically for free because it's, you
14 know, it's free FAR and it's two more stories, and
15 the only thing you have to is set it back.

16 So what I'm wondering, in your mind I
17 mean, is it really sufficient that eight percent
18 at 80 percent of AMI affordable housing is the
19 right payback for that? Because it just seems a
20 little far-fetched. It's just hard to believe
21 that that's really enough.

22 MR. KARDON: Well, I don't see it as free
23 space as you alluded to. The eight percent is
24 still a cost to it and it's a cost that we've
25 become accustomed to for market rate projects and

1 zones that we've developed. But we're looking at
2 projects that some part of the roof, some part of
3 the penthouse is amenity space, some part is unit
4 space, and there's a right balance there and each
5 project is unique.

6 MR. MAY: All of which benefit the
7 residents or the developer, right? I mean, I
8 guess you know, there are a number of proposals
9 here that sort of cut at that a little bit by
10 either limiting what's free FAR so that you're
11 encouraged to perhaps you know, model the building
12 a little bit differently so that it's not just the
13 biggest possible box you can get, or going to a 50
14 percent contribution, or in some cases just going
15 with a single story because it limits that
16 potential extra development.

17 I mean, I'm just, I'm not seeing enough
18 in what you're proposing to make it worthwhile
19 from the common good perspective.

20 MR. KARDON: Well, I think the crux of my
21 argument is that the city has a desire for more
22 housing supply, the city has the desire for more
23 affordable housing.

24 MR. MAY: Right. Do we need more of the
25 highest price possible housing? Is that what we

1 need is more penthouses?

2 MR. KARDON: It's having --

3 MR. MAY: I mean, we don't really have a
4 lot of penthouse units now. But do we need more?
5 I mean, is that what we need, the most expensive
6 stuff?

7 MR. KARDON: Having some -- I mean, as an
8 economic argument, having higher priced housing on
9 penthouse allows for less pressures on other
10 housing throughout the rest of the building.
11 There is --

12 MR. MAY: But in the market that we're in
13 right now, is that what we're going to experience?
14 I mean, it seems to me that you know, you can
15 build them as expensive as you want, people will
16 still come and buy them. They'll line up to buy
17 them.

18 I mean, that's the current market, but --

19 MR. KARDON: There's limited demand for
20 high priced units on penthouses, but there's only
21 so many -- so much square feet that will be
22 created.

23 MR. MAY: Okay. All right. I'm sorry.
24 I don't mean to be picking on you, I'm just like,
25 you made the -- you spelled out the argument so

1 clearly, Jon, I just had to ask you those
2 questions.

3 MR. KARDON: No, I think there's a true
4 risk in implementing 50 percent AMI as the fee
5 associated with it that might encourage the
6 developers, instead of putting units on the roof
7 to instead fill it with amenity space and not put
8 the units, and then not have the affordable, you
9 know, factor.

10 MR. MAY: Yeah. And then is that really
11 a bad thing? I mean, you know, one of the things
12 that was under discussion at NCPC when they were
13 debating a recommendation to make to the congress
14 was that it should be limited to communal
15 recreational space and not actually include
16 housing units.

17 MR. KARDON: It's not that it's a bad
18 thing, it's that it won't achieve the goal of
19 providing more housing and relieving the pressures
20 on housing prices, because you're not creating new
21 units. You're creating new amenity space.

22 MR. MAY: Right.

23 MR. KARDON: So it doesn't fulfill those
24 goals.

25 MR. MAY: Okay.

1 MR. GLASGOW: Commissioner May, if I can
2 add on there?

3 MR. MAY: And I was going to ask you the
4 next set of questions, so go ahead.

5 MR. GLASGOW: Do you want me to --

6 MR. MAY: No, no, no, go ahead.

7 MR. GLASGOW: All right. I think that at
8 least what we're finding is by the time you have
9 all your mechanical override, the other space that
10 you have to have that's not devoted to residential
11 units or not capable of being devoted to
12 residential units, plus all the sound attenuation
13 that you have to do and other things that you have
14 to design into the building, I mean, we're hoping
15 that we're going to get a decent amount of housing
16 up on the roof in certain buildings, but it's
17 difficult. By the time you do the setbacks and
18 everything else and have all the other space,
19 we're finding that I'd have to get some examples
20 back out with respect to it, but we're trying on
21 several sites that are 25, 30,000 square feet,
22 getting seven or 10,000 square feet of residential
23 space up there for units is a challenge.

24 MR. MAY: Uh-huh. So I'm going to follow
25 this line just a little bit further. One of the

1 things that I struggle with in this whole
2 discussion is that we have the potential to
3 incentivize a lot of good things. But there's
4 also the potential to incentivize some bad things.

5 MR. GLASGOW: Uh-huh.

6 MR. MAY: Or to encourage people to push
7 the limits and find new ways, you know, to take
8 advantage of the regulations and do some things
9 that are really not intended. They weren't what
10 we were trying to achieve from the beginning in
11 loosening up the use of penthouses.

12 So if you had to make a choice between
13 something like a limit of .4 FAR or .4 FAR free on
14 the penthouse versus having to do the affordable
15 housing at 50 percent of AMI, which would be
16 better?

17 And maybe Mr. Smart would want to answer
18 this one too.

19 MR. GLASGOW: Right. Probably because
20 the way the proposed reg was structured it was .4
21 FAR of the space that's not space that was dealing
22 with the, you know, the stairwells --

23 MR. MAY: The mechanical, right.

24 MR. GLASGOW: -- and the mechanical and
25 everything else.

1 MR. MAY: Right.

2 MR. GLASGOW: I'd probably take the .4.

3 MR. MAY: Uh-huh. It's that much more
4 difficult to do 50 percent AMI housing?

5 MR. GLASGOW: It's very difficult. It's
6 very difficult. Particularly in concrete high
7 rise construction.

8 MR. MAY: Uh-huh. Okay.

9 MR. GLASGOW: And we do have the letter
10 from -- Roger Lewis has got a letter in the record
11 that has some things of some of the complexities.

12 MR. MAY: Uh-huh.

13 MR. GLASGOW: We didn't have him do an
14 economic analysis of it but we had a discussion
15 concerning --

16 MR. MAY: Okay. All right.

17 MS. COHEN: When you say how difficult it
18 is, though, isn't it by area of the city?
19 Wouldn't you say that certain areas, still you
20 could get to the 50 percent because of the cost
21 the land is less in certain neighborhoods?

22 MR. MAY: Cost of the land is less but
23 the building construction type, when you're doing
24 high rise concrete package, I mean there is so
25 much of that that it's just a fixed cost of doing

1 that because you have the evacuation system for
2 all of the -- you know, that goes up and down the
3 building, how you have to do the stairwells and
4 all of those type of things.

5 MS. COHEN: That's understood. I'm just
6 saying though, there still are some neighborhoods
7 which you could probably get to the numbers based
8 on the fact that the land may be less expensive,
9 maybe subsidized by the city.

10 MR. GLASGOW: If it's subsidized by the
11 city that's different because we're seeing that in
12 the LDDAs that were called back. And some of
13 those we've had land that the original contract
14 was, I call it in one example about \$15 million
15 and now it's down to about zero from going from 20
16 to 30 percent, and then increasing the depth of
17 the subsidy. It's expensive and its difficult.
18 If it wasn't that difficult we'd just be doing it
19 and moving on.

20 MS. COHEN: Thank you.

21 MR. MAY: Just to close out that whole
22 line of thought, I mean, I think one of the things
23 that this triggers for me, at least, is the entire
24 system of inclusionary zoning and whether we have
25 the right incentives and the right numbers that

1 we're using because 80 percent of AMI, when AMI is
2 the -- I mean, it's the area median income. It's
3 not the District median income and --

4 MR. GLASGOW: Right.

5 MR. MAY: -- we run up against that. And
6 then there are condo fees that get added to it. I
7 mean, there are all these things that make it not
8 as effective as we want. And so I mean, I would
9 put this out to everybody in the development
10 community to be putting on your thinking caps
11 about the right ways to incentivize affordable
12 housing because there has to be another formula
13 for this that's going to work better than what we
14 have right now.

15 And when we take this up, you know, we're
16 not going to come up with all the answers on our
17 own, and I think anything that you can do along
18 those lines is going to be tremendously helpful.

19 MR. GLASGOW: No, we're looking forward
20 to that and we're having those discussions within
21 a lot of different groups right now because we
22 understand the issue with the AMI. We understand
23 the issue with the 20 percent bonuses because
24 there are a lot of different ways to do that.

25 And I'm just going to put a far out

1 example. If you said okay, if you do a square
2 foot of affordable housing at 50 percent AMI you
3 get 10 additional square feet. Well, we'll jump
4 on that. I mean, but there's something in between
5 --

6 MR. MAY: Okay.

7 MR. GLASGOW: -- that we need to figure
8 out. And we also need to figure out, we had done
9 this in a case years -- I had done it in a couple
10 cases years ago, and then more recently on the
11 View 14 case where we had projects nearby that
12 were like low income equity co-ops. We did 40
13 some units with a million dollar -- because we put
14 in the equity.

15 MR. MAY: Uh-huh.

16 MR. GLASGOW: Which is in the financial
17 stack that the affordable housing providers are
18 dealing with, and I represent a number of them.

19 MR. MAY: Uh-huh.

20 MR. GLASGOW: The equity piece is the
21 most difficult piece. They are very adept at
22 going out and getting pieces of -- they can
23 finance -- it is more difficult to finance
24 affordable housing project than it is a half
25 billion dollar market rate project with different

1 types of uses. And I'm sure Ms. Cohen knows all
2 about that. I am astonished by how difficult and
3 how much different areas and pots of money they
4 cobble together to get these relatively small
5 projects built.

6 MR. MAY: Right.

7 MR. GLASGOW: But if you can come in with
8 the equity then that gives a real shot in the arm.
9 And I think I've got that right. From what I've
10 seen is if you can come in with a million bucks of
11 equity or something, you can do wonders for what
12 it does for the rest of the project and how it is
13 they get the rest of the financing together. So
14 we're going to be looking at that very seriously
15 and I think that we need to see where is it that
16 we can put those pots of money and those resources
17 together with those that are really proficient at
18 providing affordable housing. Because we're
19 trying to make people that aren't used to
20 affordable housing do it in concrete high rise
21 structures which is the most expensive kind of
22 construction you can have.

23 MR. MAY: Uh-huh.

24 MR. GLASGOW: And I think it's not a good
25 fit.

1 MR. MAY: Uh-huh.

2 MR. GLASGOW: And I think there's going
3 to be a way to do that, that is much more
4 efficient. And I know years ago Commissioner
5 Miller, when we had with Dave Clark, he called us
6 all in a room and said, you work with these guys
7 and you figure out how to get more bang for the
8 buck. What it was trying to do was make it
9 cheaper for us so we would work with the
10 affordable housing providers because they would
11 get more housing provided per dollar than we could
12 possibly do on our own.

13 MR. MAY: Okay. Thanks. I'm going to
14 pass on my other couple of questions because I've
15 taken a long time in this discussion but this has
16 been worthwhile. Thank you.

17 CHAIRPERSON HOOD: Okay. Vice Chair
18 Cohen.

19 MS. COHEN: Thank you, Mr. Chairman. I
20 have a suggestion for you, is to talk to one of
21 the people on the podium with you, which is Ms.
22 Bacon. She has done quite a bit of affordable
23 housing and knows the ropes and I have my own
24 opinions as to the need for FHA insurance in this
25 city because that provides the equity, actually,

1 and low rates.

2 But in any event I just want to make sure
3 I'm not assuming something that you all are really
4 focused on medium and high density uses with the
5 possible exceptions of C-2-A and 5-B. is that
6 correct? Can anybody correct me if I'm wrong or I
7 think that's what I'm gathering.

8 MR. GLASGOW: The projects that we're
9 mostly focused on here are high rise --

10 MS. COHEN: Right.

11 MR. GLASGOW: -- construction. And we
12 understand that it seems to be, at least from when
13 we're reading the reports from the Office of
14 Planning and the questions that you all have, it's
15 almost like the fault line is like R-5-B, C-2-A,
16 that type of thing. And where those projects are
17 butting up against other residential areas.

18 MS. COHEN: Right. I just want to make
19 sure that I'm not assuming what you're saying.

20 And actually, Ms. Bacon, we could use
21 your comments in writing. I don't think we've
22 received them.

23 MS. BACON: I apologize. I thought we
24 had submitted them.

25 MR. GLASGOW: Yeah, they're in writing.

1 MS. COHEN: I don't think yours were.
2 Maybe they are. I will check again.

3 MR. GLASGOW: I will certainly submit
4 them, yes. Thank you.

5 MS. COHEN: Okay. I just want to mention
6 something about the use of penthouses for
7 community benefits. Again, that's not free space.
8 The tenants are paying for that. So you're
9 getting income, basically, in the form of higher
10 rents for that space. So I just somehow believe
11 what Commissioner May was saying has some accuracy
12 to it because it's -- you're getting something for
13 that space. You can charge more, and so it's
14 income to the project in my opinion.

15 I think actually that's the only two
16 things I had to say. Actually, Mr. Smart, I think
17 that your numbers, your evaluation was very
18 helpful. I've been looking at it throughout the
19 period of time since you originally submitted it
20 and that's been very beneficial to me. Thank you.

21 CHAIRPERSON HOOD: Thank you. Mr.
22 Turnbull.

23 MR. TURNBULL: Thank you, Mr. Chair. I
24 just want to get back to Mr. Glasgow. And I think
25 you started to talk about it, but you used the

1 phrase, contribution baseline. Is this something
2 you're working on, or you started to explain it
3 and you never really finished, I don't think.

4 MR. GLASGOW: I'm sorry. Which -- what's
5 that --

6 MR. TURNBULL: Well, you used the term,
7 contribution baseline.

8 MR. GLASGOW: With the thousand feet?

9 MR. TURNBULL: Yeah, for affordable
10 housing and --

11 MR. GLASGOW: Right.

12 MR. TURNBULL: -- I thought you were
13 talking about -- but I don't know if you ever
14 really -- at least maybe I missed the continuation
15 of that.

16 MR. GLASGOW: All right. Well, there was
17 what we thought is that particularly for existing
18 buildings that the first thousand feet that you
19 use up there, there's no charge for that. That is
20 clear that the first 1,000 feet is like an
21 exemption, like the first 2,000 square feet or
22 whatever for a parking requirement. You know,
23 those type of things. And that was in the context
24 of almost like a clarification.

25 With respect to one of the provisions

1 that the Office of Planning has, I'm trying to
2 find it here in the regulation, because it says
3 everything that's more than 1,000 square feet, you
4 have the IC charge for.

5 MR. TURNBULL: Okay.

6 MR. GLASGOW: But I'm saying --

7 MR. TURNBULL: Yeah.

8 MR. GLASGOW: And that we want it
9 clarified that the first 1,000 square feet was
10 like that baseline.

11 MR. TURNBULL: Like that baseline. Okay.

12 MR. GLASGOW: Yeah.

13 MR. TURNBULL: Thank you for explaining
14 that. Mr. Williams, I'm really surprised that you
15 want to put a whole industry out of work.
16 Hydraulic elevators. I have been in so many
17 hydraulic elevators it's ridiculous and I find
18 most of them run very well. You must have a
19 building that is very old.

20 MR. WILLIAMS: I've been in some of those
21 that are creaky and unreliable and unpleasant. So
22 I don't mean to put an entire industry out, but --

23 MR. TURNBULL: Well, I think you're being
24 a little --

25 MR. WILLIAMS: -- you'll also see that

1 there are references in other of the remarks that
2 talk about the cost of maintenance and the speed
3 at which they typically operate, which don't make
4 then an attractive way to get moved up and down.

5 MR. TURNBULL: Yeah, but I think what I'm
6 getting at is that hydraulic elevators are here.
7 They're going to stay. They're going to get
8 better. They improve technology. They're always
9 getting better. And they are a solution to a low-
10 rise building.

11 MR. WILLIAMS: Okay.

12 MR. TURNBULL: And I think if a
13 contractor is going to be putting in a traction
14 elevator with gears and all that as opposed to
15 hydraulic, I think he's going to really think hard
16 and fast about really what he wants to do.

17 MR. WILLIAMS: All right.

18 MR. TURNBULL: Thank you.

19 CHAIRPERSON HOOD: Okay. Commissioner
20 Miller, any questions, comments?

21 MR. MILLER: Yes. Just a couple, Mr.
22 Chairman. Thank you. My colleagues have touched
23 on a couple things I was going to ask.

24 But Mr. Smart, on the 50 percent AMI
25 where you say it would -- both you and other say

1 that it wouldn't create a disincentive because the
2 net return would be zero or less than zero, have
3 you looked at since you run numbers -- and we'll
4 look at this, of course, when we get to the city-
5 wide IZ case, and we should look at it then, and
6 maybe we should wait for this provision. But have
7 you looked at the something in between 50 and the
8 80, that's like 65 percent SSE? Would that be
9 enough to get a return and not create a
10 disincentive?

11 As my colleagues have said, what we see
12 even when -- in most of the neighborhoods in the
13 city, 80 AMI for that neighborhood is above market
14 rate. So we're not really producing affordable
15 housing for our residents and so that's why we
16 asked many, many, many months ago for the Office
17 of Planning to look at -- keep our affordability
18 levels.

19 MR. SMART: If I could comment on a
20 couple of things to really to prior conversation,
21 no we've not looked at the delta like in between
22 somewhere as you say, from 50 to 80. And of
23 course the closer it gets to 80 the more balanced
24 it would be given the assumptions we provided.

25 I do want to -- I appreciate the

1 commissioners picking up that, and others, that
2 the focus here is on the most expensive
3 construction and the dialog with respect to
4 affordable housing in those locations which can
5 support stick construction, which was saw was my
6 qualifier, it's a very different economic
7 equation. Not just because the construction costs
8 are different, but in those marketplaces the
9 income that's foregone by not going with the
10 market unit is not as much because the market
11 units aren't generating as much. So the deltas
12 are very different when you move into the stick
13 built environments which would be common in the
14 majority, at least, of the land area in the
15 District.

16 So we did not run that analysis. At a
17 third point I would add just in terms of detail,
18 is that the construction on the top floors as I
19 discussed in November, if I recall, are actually
20 considerably more expensive than the average cost
21 for development in the rest of the building
22 because of the special nature of being able to
23 service the top. So all of those factors put
24 together is why the hurdle, whether it's at 50 or
25 65 or 75, which we have not tested, is very

1 significant as proposed anyways for the high rise
2 buildings.

3 But if it's okay with others I think that
4 if we had done the analysis I'm suggesting for a
5 stick built, and we have in other cases done that,
6 it would be less than 80 percent.

7 MR. MILLER: Okay. Well, I'd be
8 interested in your analysis if you want to provide
9 any further analysis on a percentage in between.

10 MR. SMART: Yeah.

11 MR. MILLER: For this case or for the IZ
12 case.

13 I appreciate each of your testimony. I
14 appreciate the specific suggestions for
15 clarifications and changes. I think many of them
16 are useful additions and revisions. I just want
17 to understand from anybody, but I think Mr.
18 Collins or Mr. Glasgow, what you are proposing for
19 the height for the C-2-A and R-5-B zones. I mean,
20 the Office of Planning proposal would have limited
21 the penthouse, I guess, to 10 feet except by
22 special exception. If I'm stating it correctly.
23 But you're saying that that 10 feet won't give you
24 the elevator override, so you need at least 15 --
25 you said 15 feet. I think you said -- somebody

1 said 16 feet. Mr. Williams.

2 And you also did come up with the helpful
3 -- I think a helpful suggestion for the special
4 exception relief for certain specific uses in
5 those zones when they're adjacent to residential
6 zones.

7 MR. COLLINS: The information we're
8 getting, and I talked to some of our members who
9 then in turn talked to elevator contractors, and
10 they kept coming back to 18.6 is what they want.
11 And I know and you know that cases have come
12 before this body and the BZA with a lower height.

13 And so what I would like to do if it's
14 possible is to take more time and drill down on
15 that and see what it is. What we do know is that
16 a 10 foot height would not allow an accessible
17 roof. So that would mean that every rooftop deck
18 in a C-2-A, typical retail and three stories of
19 residential would not allow a roof structure
20 without -- or a rooftop deck or access without
21 coming to the BZA. And so if there's some way to
22 get a number that is a number that's achievable,
23 we do know that even in a hydraulic elevator you
24 do need the space above the cab as it goes to the
25 roof. There's a requirement for that. And

1 there's reasons for that and I've dealt --
2 detailed some of that.

3 But I don't know that it -- I am not
4 personally convinced that 18.6 is necessary in all
5 respects.

6 MR. MILLER: Okay.

7 MR. GLASGOW: And I think also,
8 Commissioner Miller, that what I was talking about
9 there in part two was that we need just more
10 height where the elevator override is. We don't
11 need it for the entire roof structure.

12 MR. MILLER: Right. Right. Okay. Thank
13 you very much. I appreciate all of your
14 testimony.

15 MR. WILLIAMS: Could I add one thought
16 there? And that is that you also need to make
17 sure that the cab itself is large enough to
18 accommodate not just the people but the goods that
19 need to be moved up and down in the building in
20 question. And if you begin to drop the height of
21 the cab you may be able to get in under some other
22 little thing. But all of a sudden the sofa, the
23 whatever it is that you need to get up, simply
24 doesn't.

25 And so I'm going to ask that you try to

1 build your calculations over an eight foot cab
2 going forward.

3 MR. MILLER: Thank you. Mr. Chairman, I
4 had one more question, I'm sorry, of Mr. Collins
5 or on the special exception relief for setbacks,
6 which is the existing -- I think is in the
7 existing code and is currently proposed to
8 continue forward, we have other testimony from
9 NCPC staff that the setback relief should only be
10 eligible for special exception relief for that
11 part of the penthouse that's below the height act
12 limit, as opposed to that part that's above the
13 height act limit. Have you seen that testimony?
14 Or that letter from NCPC staff?

15 MR. COLLINS: I have not seen the test
16 and we did not vet that issue.

17 MR. MILLER: Okay.

18 MR. COLLINS: If you'd like us to we
19 certainly can do that.

20 MR. MILLER: Yeah, I think that would be
21 helpful.

22 MR. COLLINS: Okay.

23 CHAIRPERSON HOOD: Thank you. I'm not
24 sure who mentioned the IZ roundtable. I think it
25 was Tuesday. Was the IZ roundtable Tuesday? Does

1 anybody -- it was Tuesday.

2 MR. KARDON: I mentioned that, yes.

3 CHAIRPERSON HOOD: It was Tuesday?

4 MR. KARDON: I'm not sure of the exact
5 date but it was within the last week.

6 CHAIRPERSON HOOD: Okay. I think it was
7 Tuesday, so no I know how it feels when we're
8 working on elections and somebody slips something
9 in because I would have liked to have at least had
10 a chance to listen. I know I can review it but I
11 haven't had a chance yet.

12 But what was the outcome of that? What
13 conclusions did they come to? What actually came
14 out of the roundtable?

15 MR. KARDON: Unfortunately I can't
16 personally speak to it. I did not watch --

17 CHAIRPERSON HOOD: Oh, you didn't attend.
18 Okay.

19 MR. KARDON: -- the session. Another
20 representative from my company --

21 CHAIRPERSON HOOD: So you're like me,
22 you're going to be looking to see what happened.

23 MR. KARDON: One of the principles of our
24 company actually was there and testified so I
25 unfortunately can't speak to it myself.

1 CHAIRPERSON HOOD: Okay. Okay. Mr.
2 Williams, I noticed your testimony you -- and I
3 appreciate the elevator overview, the hydraulic.
4 I'm not going to say you're trying to put the
5 hydraulic elevators out of business. I don't
6 think that was the intent. You may have. That's
7 what Mr. Turnbull -- that's why there's five of us
8 up here, I guess.

9 But one of the things about the
10 hydraulic, you dig down, am I correct, because
11 it's piston driven?

12 MR. WILLIAMS: Yes. You can have one
13 piston, which means you have a deep hole that goes
14 down as deep as you want to go up. Or you can
15 have a staging of pistons and rings if you will,
16 concentric pistons. In that case you still need
17 to dig down and -- yes, it makes for a deeper
18 hole.

19 CHAIRPERSON HOOD: Right. And I know
20 now, in this city for the most part, and I'm not
21 trying to put them out of business. I just know
22 having served on a elevator committee at one time
23 that was one of our issues, digging down into the
24 structure was an issue when we were trying to put
25 an elevator in. So. And I'm not trying to put

1 them out of business. I don't want to get in
2 trouble with my colleagues, but I just know that
3 is a concern. I appreciate your diagram here on
4 the back of your testimony.

5 But you know, for me and Mr. Kardon and
6 others, when we talk about affordable housing,
7 today I had a chance and I'm still struck by the
8 comments that some of the young folks at the
9 University of Maryland mentioned to me today about
10 affordable housing, and how many I've heard had to
11 move out of this city because we're working on
12 affordable housing.

13 So you know, for me, you know, I guess it
14 didn't set well with me. And I hear us down here
15 grappling with it, we're talking about the
16 Millennials. And one of the things that came up
17 today, which I'm going to be stressing up here
18 from this point on because you learn something.
19 I've been here 17 years but you learn something
20 all the time. Those particular residents, some of
21 them were D.C. residents. Are you all zoning for
22 us or for our kids, or our kids that are coming
23 behind us? And to me that really stuck with me.
24 It stuck with me since about 4:30.

25 And I'm hearing this discussion and I'm

1 hearing all this affordable housing we're doing
2 and how we're doing stuff and we're trying to make
3 stuff affordable. But for some reason the message
4 is not getting done. I'm not sure what we're
5 doing for those who have not even been conceived
6 yet. That's just where I am, and forgive me for
7 digressing and going into that, but that's kind of
8 where I am with this.

9 I hear this discussion, two people today
10 who could talk about affordable housing and what
11 we're doing here in the city, make it affordable,
12 adding to the penthouse, not adding to the
13 penthouse -- well, I shouldn't go into pop-ups.
14 But anyway, all this stuff we're doing talking
15 about affordable housing, and are we really
16 achieving that? I hear it. I hear it up on this
17 dais all the time. But really, when you go out
18 and the rubber meets the road and the residents
19 say, the younger folks, younger than I am, I
20 consider myself young but younger than I am, are
21 saying, I'm having to leave the city because I
22 can't afford it.

23 So we sit down here and have all these
24 discussions but who are we really helping? What
25 are we really doing? But that's a whole other

1 discussion. And I know that's not the topic for
2 tonight, but that's a topic that I'm going to be
3 bringing up.

4 I want to thank everyone for their --

5 MR. GLASGOW: Mr. Chairman, if I could
6 just add one thing there? I think one thing with
7 respect to affordable housing and how we're
8 dealing with all of that in the city, we need to
9 start and look at our budget. We've got a \$12
10 million budget, got \$100 million for the Housing
11 Production Trust Fund. That is far less than one
12 percent of the budget for the city. I just leave
13 that out there. I'm not sure exactly where to
14 take that and how that is dealt with, but we are
15 talking about whatever it is that we do on this is
16 going to be nibbling around the edges because the
17 budget has got to conform with -- remember, if it
18 was a billion dollars for affordable housing, that
19 would be 10 percent. Less than 10 percent of the
20 budget. And we're talking about 100 million.

21 CHAIRPERSON HOOD: And I appreciate that.
22 But when you go out -- I'm a realist. When you go
23 out and you hear from people and you hear them
24 say, you are basically doing things in the
25 District of Columbia for a group of people who

1 like it today. The group that, again, that may
2 not be conceived yet or that's going to come long
3 after, then what happens to all that you've
4 created here. So I guess that's why we need to
5 have a variety. And that's kind of where I am
6 with that.

7 But anyway, I thank everybody for
8 indulging me on that. But that's an issue that we
9 all need to take serious and consider because are
10 we zoning for us now and trying to get it done
11 now, or are we looking on down the lines for
12 generations after us? And that stuck with me.
13 And for the young folks to say that to me today,
14 that really stuck with me.

15 And I feel like, I've been here 17 years
16 trying to achieve something and it seems like I've
17 been running around in a circle. It seems like
18 I've been running around in a circle. So we need
19 to look out -- and that came from them. I wasn't
20 in that class. I mean, I just went to -- I was
21 invited to speak to the class today for an hour
22 and a half. And it was very -- I wish they could
23 come down here and explain -- and some of them are
24 District residents.

25 Anyway, you know, anyway. Okay. I thank

1 you all for your testimony. Appreciate it.

2 Anyone else in support? Let's go to
3 opposition. Ms. Gates, Ms. Simon, Carol Aten, Mr.
4 Hargrove, Ms. Anne Sellin, Alan Gambrell. Tienge?
5 You're not -- oh, you're here listening? Okay.
6 Laura Richards. Is that eight? Let me see.
7 Seven. Do we have one more person who would like
8 to testify in opposition?

9 Okay. So this will be the last -- anyone
10 else like to come forward? Why don't we do
11 something different this time? I've never tried
12 this. I'm going to see how this works.

13 Ms. Sellin, we're going to start with you
14 and we're going to go from my middle to your left,
15 and then we're going to come back with Ms.
16 Richards.

17 Here's your microphone.

18 MS. SELLIN: My name is Anne Sellin and
19 I'm testifying for the Residential Action
20 Coalition.

21 Derived from an endeavor to control pop-
22 ups in the R-4 zone, which has fervent support
23 from the public that was stymied by your
24 Commission's decision, this process is morphed
25 into an attempt to dramatically up-zone almost the

1 entire city. And part of that of course is from
2 congress.

3 And under the old tried and true excuse
4 of creating quote, "affordable housing," this is
5 now a days used as an excuse to permit almost
6 anything developers want; an economic incentive to
7 destroy unity in row house blocks to increase
8 their costs. The purpose is to permit an extra
9 one or two stories, penthouses, up to 10 to 20
10 feet high atop buildings for all or partial
11 occupancy as residences.

12 This would disrupt the scale and unity of
13 a block and create inappropriate outgrowths which
14 would be glaringly inappropriate. It would also
15 encourage the further subdivision of row houses,
16 drive up their costs, and increase the number of
17 family size units. The effects would be
18 substantial in areas outside of historic districts
19 where there is an incentive for developers to buy
20 and destroy three adjacent houses in order to tear
21 them down for a big out of scale apartment
22 building.

23 Judging from decisions from the
24 Preservation Review Board regarding added stories
25 there would be little or no protection in historic

1 districts. That board virtually never challenges
2 matter of right zoning. Most R-5 row houses are
3 lower than their now permitted heights. The R-5
4 row house is usually three stories, many having
5 English basements. But they seldom stand over 45
6 feet.

7 Under this proposal in addition to the
8 zoning envelope, combined with the proposed
9 penthouse could rise up to 20 or even 30 feet
10 above their neighbors in a block face and
11 constitute a very obtrusive sore thumb.

12 The comprehensive plan discourages this.
13 Action MC11A in rezoning a row house block states
14 that selectively rezone well established
15 residential areas where the current zoning allows
16 densities that are well beyond an existing
17 development pattern. The emphasis should be on
18 row house neighborhood that are presently zoned R-
19 5-B or higher which include the areas between 14th
20 and 16th Streets, parts of Adam's Morgan, areas
21 between S and U Streets Northwest and sections of
22 Florida, Calvert, and 16th. This means down-
23 zoning, not up-zoning.

24 Also policy LU219 says, "Addition of
25 floors and roof structures to row houses and

1 apartment buildings discourage additional floors
2 and roof structures on row houses and apartments,
3 particularly where out of character with other
4 structures on the block."

5 Quote, "Generally discourage increases in
6 residential density resulting from new floors and
7 roof structures with additional dwelling units
8 being added to the top of existing row houses and
9 apartment buildings. Particularly where such
10 additions would be out of character with other
11 structures on the block. Roof structures should
12 only be permitted if they would not harm the
13 architectural character of the building on which
14 they would be added, or other buildings nearby."
15 End quote.

16 Residential and commercial buildings such
17 as the row house areas of C-2-A-B, C-3-A, B, and
18 C-2-C deserve to be undisturbed by additions.
19 Most of these were built in the 19th Century in
20 the mid-city area and many of their footprints
21 exceed the permitted zoning. The Lewis Plan of
22 '59 intentionally made them nonconforming and
23 created a more restrictive FAR and footprints to
24 create light, air, and back yards. This proposal
25 eliminates FAR completely for pop-up allowance,

1 subverting those practical purposes.

2 Affordable housing considerations and a
3 lasting effect is just a ruse. There is little
4 evidence that lasting affordable housing would be
5 created if a person fitting the criteria gets an
6 apartment and begins to earn more than the
7 formula, will he or she be evicted? I gather not.
8 How will affordability be continually assured?

9 Zoning enforcement is pathetic as it is
10 and has been for decades. Will there be a housing
11 entity whose job it is to enforce? How will the
12 set-aside units always be assured of being rented
13 to someone whose income is moderate or less?

14 Since IZ is a reason for this up-zoning
15 across the city it is incumbent on you to know all
16 the details of enforcement. It's highly ironic
17 that the city is using the IZ argument in this
18 case at the very same time it is preparing to
19 evict everyone from their homes at Berry Farms in
20 order to turn those 25 acres over to developers
21 for the construction of new housing for much
22 wealthier people. Thank you.

23 CHAIRPERSON HOOD: Thank you. Next.

24 MR. GAMBRELL: Hi. My name is Alan
25 Gambrell, ANC Commissioner from Adam's Morgan,

1 Lanier Heights. We're R-5-B.

2 My submitted comments outline ANC 1-C
3 perspectives on various alternatives being
4 proposed. And in summary we endorse the 10 foot
5 height limit which is in synch with the
6 comprehensive plan's discouragement of roof
7 structures on row houses.

8 However, we would object to provisions
9 that allow for habitable space in penthouses that
10 exclude the space from floor area ration
11 calculations and that omit any setbacks from
12 shared common walls. If adopted each of these
13 proposals would create new incentives to increase
14 allowable density to overbuild, to harm the
15 inventory of single-family homes, all contrary to
16 the comprehensive plan.

17 I'd like to focus my time to make a few
18 real world observations on the impact on R-5-B of
19 the penthouse proposals I just highlighted, under
20 which logic is rhetorically jumping off the
21 rooftop. And in what rational world would one be
22 allowed to add square footage to a building and
23 yet not count that space when it comes to the
24 maximum square footage formula under FAR? That's
25 exactly what these rules would do. They would let

1 a developer pretend like the penthouse, new
2 habitable space, simply does not exist for
3 purposes of compliance with FAR limits, providing
4 new incentives and new permission to build
5 penthouse pop-ups, allegedly affordable, highly
6 desirable micro-units for millennials. Three
7 hundred to 400 square feet of urban living.

8 I might add that not counting penthouse
9 space as a further erosion of FAR rules, which is
10 already happening all over the city under the
11 logic that allows developers to call the lower
12 level square footage of a row house a cellar under
13 misguided and poorly enforced regulations that in
14 a zoning sleight of hand exempt around .5 FAR
15 lower level square footage from FAR.

16 The same type of zoning trickery is now
17 being proposed for the top of the row house, a .4
18 FAR exemption. Another juicy loophole to exploit
19 to build beyond FAR limits. Our neighborhoods are
20 literally getting it from both ends.

21 Stop and ask yourselves, what's the
22 purpose of FAR rules if Zoning Regulations create
23 more and more new gimmicks, new loopholes that
24 treat new square footage as if it does not even
25 exist. Common sense dictates that livable square

1 footage should be counted no matter where it is,
2 located in the house. To put this into some
3 perspective I will share with you in a moment a
4 chart to show that if you add the penthouse
5 proposal to not count .4 FAR and add it to the
6 existing lower level cellar exemption, row houses
7 and R-5-B could exceed the 1.8 FAR limit by 50
8 percent or more, going as high as 2.7.

9 My final point, and what does this new
10 penthouse rule do to the people who live next
11 door? These new mini pop-ups unleash on the next
12 door neighborhoods a whole host of issues around
13 structural load and safety, snow load and solar
14 panels. The expectation of living in a row house
15 is that you share certain space named the common
16 walls. And yet penthouse rules essentially grant
17 ownership and preference to whoever gets up there
18 first and starts building.

19 If I later decide to pop up a penthouse
20 how do I build my penthouse walls along the common
21 wall with yours in the way? Do I face greater
22 financial burdens to build my own? Can I attach
23 to your wall? If not, how do I get to my wall to
24 finish off the exterior which runs right next to
25 yours? Do I have to put on additional structural

1 protections given the added weight of my own pop-
2 up?

3 In summary, the proposed rules I just
4 highlighted will create a powerful new incentive
5 for developers to snatch up homes in R-5-B and
6 convert them to multi-unit buildings under rules
7 that pretend like the top floor, in addition to
8 the lower level, simply do not exist for purposes
9 of FAR. That's not an improvement and that's not
10 logical. Thanks.

11 CHAIRPERSON HOOD: Thank you. Next?

12 MS. GATES: Members of the Zoning
13 Commission, I am Alma Gates representing ANC 3-D.
14 This is the moment of truth.

15 The proposed penthouse regulations place
16 the Zoning Commission in a very difficult
17 position. The Commission is being asked to
18 consider changes to regulations that are
19 inconsistent with the comprehensive plan.

20 The Comprehensive Plan Amendment Act of
21 2010 did not anticipate changes to penthouses.
22 And the next amendment cycle will not commence
23 until sometime in 2015. Also, in 2012, the former
24 director of the Office of Planning informed
25 congress in testimony on this subject of changing

1 building heights in the District of Columbia that
2 no action would be taken to alter the height of,
3 or uses within penthouses without the necessary
4 amendments to the District elements of the
5 comprehensive plan, except in targeted areas.

6 Nothing congress decided with regard to
7 the Height Act requires the District of Columbia
8 to take any action in terms of implementation.
9 Yet through the penthouse proposals OP is asking
10 the Zoning Commission to consider changes in
11 height and use for every zone. And every area of
12 the city is being treated as a targeted area.

13 The comprehensive plan guidance needed by
14 the Zoning Commission for proposed amendments in
15 this case does not exist. Affordability has been
16 made a condition for allowing some habitable
17 penthouses. It must be said again, affordable for
18 whom?

19 Recent affordability figures are based on
20 federal AMI of \$107,300 for a family of four and
21 D.C. AMI of \$77,000. Penthouses with your
22 picturesque vistas and monumental views will
23 provide great entertainment spaces for foreign and
24 corporate investors but will do little to help
25 those in need of affordable housing.

1 So where will the off-site housing be
2 located? And who will ensure and enforce
3 implementation or payments to the Housing Trust
4 Fund? Is the Zoning Commission convinced --
5 excuse me -- that families' need of housing will
6 be served by the proposed penthouse changes, or is
7 this simply a feel good rationalization for more
8 density and height?

9 What began some time ago as an effort to
10 update and bring clarity to the zoning code
11 appears to have morphed into some unique developer
12 friendly Zoning Regulations. For example, the
13 recent Walter Reed development where none of the
14 zone names relate to other development standards
15 is not unlike the penthouse proposals in this
16 case. They result in spot zoning and guidance for
17 them cannot be found in the comprehensive plan.

18 In earlier testimony a case study of the
19 proposed Safeway PUD development on McArthur
20 Boulevard in my SMD was used to demonstrate the
21 kind of change that would result if the proposed
22 penthouse height were approved. The current
23 height of the single-story Safeway front facade is
24 20 feet. A C-2-A PUD would bring the height up to
25 65 feet. Add a penthouse and special exception

1 and the structure is at 85 feet. Or 65 feet over
2 what currently exists.

3 Changes in height and density via the
4 Height Act should not be used as a means to end
5 run the comprehensive plan and the Zoning
6 Regulations. Eliminate predictability or alter
7 neighborhood character.

8 For the reasons cited in this testimony
9 and our resolution, ANC 3-D opposes all proposed
10 text amendments, including special exceptions in
11 case 14-13 for low density residential and
12 commercial areas of the city with allowable
13 heights of 50 feet or less. Our resolution is
14 found at Exhibit 61 in the case file and we ask
15 that the Zoning Commission afford the 8, 0, 0 vote
16 of ANC 3-D the great weight to which it is
17 entitled under D.C. law.

18 CHAIRPERSON HOOD: Thank you. Next?

19 MS. MCDANIEL: Good evening, Chairman
20 Hood, Commissioners. My name is Betsy McDaniel.
21 I live in an R-4 neighborhood and I am very
22 concerned about the pop-ups. I haven't prepared
23 testimony but I will send some and I'd like to
24 send you some pictures.

25 If the 14-11 is passed as its been

1 proposed, you will still be able to add a floor to
2 a lot of the homes in our neighborhood that are
3 currently two stories. And adding the penthouse
4 like is being done now, is really is amazingly
5 visible to -- you can see them a block away now.
6 You can drive down North Capitol and see one now.
7 We have a huge pop-up, one floor and then it's a
8 huge house because it's a huge lot. And it's a
9 huge penthouse and you can see it for a block
10 away.

11 And right now I'm finding that the
12 penthouses are very seldom following the current
13 Zoning Regulations that I believe they're -- I
14 mean, I don't think they exceed the size, the one-
15 third size, but they aren't matching the materials
16 like it says is required in the zoning. And I
17 don't think they always have the setback that
18 they're supposed to.

19 But we also have small pockets of C-2-A,
20 and so it's the same thing. I don't think any of
21 the buildings that are C-2-A in my area need
22 elevators. They're row houses that had ground
23 floor retail and I guess they decided that was a
24 good place to put some C-2-A when they did the
25 zoning. But they're really just row houses just

1 like the -- and they're next door to R-4 row
2 houses. And so I don't think any of those need
3 elevators and they certainly don't need gigantic
4 penthouses on them.

5 You mentioned -- I mean, you did mention
6 pop-ups so I will say, yesterday I was asked to go
7 visit a woman in Petworth who has a pop-up going
8 in by her and someone asked me to go talk to her
9 about it. And I was looking at the comments from
10 the Zoning and the -- well, the DCRA on the plans,
11 and I didn't have a set of the plans because the
12 neighbors haven't received them as they should
13 have. And I was trying to explain to her that a
14 floor would be added.

15 And then she said, well what about a roof
16 deck? And I said, yes, it says roof deck there
17 with a penthouse. And she said, what's a
18 penthouse?

19 And I said, well, it's access to the
20 roof. And she thought it was another floor. And
21 I said, no, it's not another floor but it can be
22 one third of that size. And then this is a woman,
23 a native Washingtonian who has lived in our
24 neighborhood all -- and she started crying. And
25 it's going to make, you know, a tremendous impact

1 on the block and the whole neighborhood.

2 So I would really like for you to
3 consider either eliminating penthouses in the
4 lower neighborhoods, because you can certain see
5 them across the street and down the block. Thank
6 you.

7 CHAIRPERSON HOOD: Okay. Thank you. And
8 we go to Ms. Richards.

9 MS. RICHARDS: Good evening.

10 CHAIRPERSON HOOD: You want to turn your
11 mic on?

12 MS. RICHARDS: That would help. I'm
13 Laura Richards and I'm appearing on my own behalf
14 in opposition to proposed penthouse regulations,
15 especially as they impact low to medium density
16 neighborhoods.

17 Habitable penthouses should not be
18 allowed in zones where the matter of right height
19 is less than 50 feet. And I think you've heard
20 eloquent testimony as to why.

21 Setbacks cannot effectively minimize
22 penthouses at 50 feet, and they're just impossible
23 to minimize at heights lower than 50 feet. And
24 there are lots of buildings along the Pennsylvania
25 Avenue Corridor and surrounding neighborhoods that

1 are well below those heights.

2 And I think that the -- I've heard the
3 argument that penthouses will -- allowing
4 habitable penthouses will improve roof design.
5 And just as we've had some really ugly pop-ups,
6 we're going to have some ugly roof decks. It's
7 inevitable. A penthouse development. And you're
8 not going to be able to do anything about them.

9 And I'm not sure why you went to all the
10 trouble to kind of address the penthouse problem
11 and now you're bringing it in, you know, in I
12 guess city wide through the penthouse development
13 proposals, making Zone C-2-A a very endangered
14 species.

15 And we have an example in our
16 neighborhood. And several years ago you approved
17 a PUD, 2300 Pennsylvania Avenue, one and two story
18 buildings were replaced with 65 -- no, 59 and a
19 half feet. And this Commission said, we're not
20 going to let you go any higher. The developer
21 wanted to go to 70 feet. You said the
22 neighborhood won't take anymore.

23 Well, if we have this penthouse proposal
24 it would go up at least another like 10 feet or so
25 in areas where you've said no more height, or it's

1 not good. And that's going to happen in the C-2-A
2 across the street from 2300, it's going to happen
3 in areas across the city. So we really do not
4 need penthouses development and C-2-A or below.
5 It can't be feasibly managed.

6 Also penthouse expansions are not minor
7 plot amendments. They should not be treated as
8 such. Their heights and PUDs are very carefully
9 negotiated. People fight down to the inch. And
10 then to come around and say, well, you can go up
11 another maybe 10 or 20 feet, it's a minor
12 modification, it just isn't.

13 I wanted to touch on the affordable
14 housing issue. Case and point, I certain believe
15 all the people who say you can't do anything lower
16 than 80 percent of AMI feasibly. But I'll say
17 that even 50 percent of area AMI is higher than
18 the median income of Wards 7 and 8. So a whole
19 quadrant of the city is not going to be addressed,
20 even if you could get 50 percent of AMI, which you
21 can't.

22 And my son cannot afford to live in the
23 city, except by living in his room at our house.
24 Thank you.

25 CHAIRPERSON HOOD: Thank you. Next.

1 MS. SIMON: My name is Marilyn Simon and
2 I am speaking on behalf of Friendship Neighborhood
3 Association.

4 OP's proposed text amendments are not
5 required by the recent amendments to the Height
6 Act but would grant large increases in matter of
7 right height and density city wide. It will, in
8 many cases, result in matter of right height and
9 densities that are inconsistent with the comp
10 plan.

11 The current Zoning Regulations on height
12 density and roof top structures serve a purpose in
13 shaping our built environment. The loosening of
14 federal regulations which involves minor changes
15 in very limited locations should not be used to
16 justify major changes in the restrictions on
17 rooftop structures across the District.

18 Further, changes in the federal
19 restrictions on rooftop structures in those
20 limited locations don't trigger a requirement that
21 the District change its regulations to match the
22 new limits of the Height Act, and certainly don't
23 trigger massive up-zoning outside those limited
24 areas.

25 At most the changes in the Height Act

1 would trigger a process that might lead to the
2 submission of new text that applies only in those
3 areas that are currently constrained by the Height
4 Act, and that text would only be submitted after a
5 careful evaluation of the impact of the likely
6 changes in use and dimensions, including a full
7 examination of the change in the incentive and the
8 ability to have taller structures with more
9 intensive use.

10 After review of these proposals and based
11 on the written analysis, we recommend that no
12 changes should be made to the allowable uses and
13 penthouses in areas that are not constrained by
14 the Height Act. Two stories should not be allowed
15 in any penthouses in the areas that are not
16 constrained by the Height Act.

17 Changes in line with the minor changes in
18 the Height Act should only be made in areas
19 currently constrained by the Height Act and only
20 after a careful analysis of the new incentives for
21 larger penthouses, and the changed zoning
22 envelope, and then only after it is determined
23 that there is adequate infrastructure to support
24 the more intensive use and that the incentive to
25 have larger penthouses will not change the

1 character of the areas.

2 All habitable gross floor area located
3 within the penthouse must be included in the
4 calculation of the building's permitted FAR.
5 Limit the size of the penthouse to one third of
6 the roof area subject to setback requirements. A
7 request to add penthouse space or habitable uses
8 to an approved PUD should not be treated as a
9 minor modification and should not be placed on a
10 consent calendar.

11 If changes are made outside the areas
12 constrained by the Height Act the penthouse's use
13 is for any building in a zone where the building
14 height is limited to 50 feet or less by right,
15 should be limited to mechanical equipment or
16 stairway and elevator overrides and for those
17 zones where habitable uses would be allowed in the
18 penthouse, night clubs, bars, restaurants and
19 lounges should only be allowed by special
20 exception.

21 In the past this Commission has expressed
22 concerns about the scale and aesthetics of rooftop
23 structures in some projects. The proposed text
24 amendment does nothing to limit oversized
25 penthouse structures or to improve their

1 appearance. In fact by providing very profitable
2 increased density for any use allowed in the zone,
3 the proposed regulations create an incentive and
4 ability to have more massive penthouse structures,
5 structures to which this Commission might object.

6 At the last hearing I focused on our C-2-
7 A mixed use corridor, such as Wisconsin Avenue and
8 Georgia Avenue and demonstrated how the proposed
9 change would result in heightened densities that
10 were inconsistent with comp plan. Similar issues
11 arise in other zones. So tonight I will discuss
12 the C-3-A zone.

13 The current limits for this zone are 65
14 feet in height with an FAR of 4.0 increased to 4.8
15 with an IC. The amendment provide an incentive
16 and ability to build to a height to 85 feet and
17 the average FAR limit would increase to 5.2 or
18 5.45. This is substantially higher than the 4.0
19 limit that was in place when C-3-A was used in the
20 comp plan description of a moderate density
21 commercial corridor.

22 It would be necessary to down-zone many
23 areas to maintain consistency with the comp plan.
24 The LP proposal is inconsistent with the comp plan
25 and should be rejected outright. Further, any

1 changes in the rule for rooftop structures related
2 to the change in federal regulations should be
3 limited to those areas constrained by the Height
4 Act and the impact of those changes should be
5 carefully -- prior to adoption of such a proposal.

6 If after study it is determined that it
7 is in the public interest to liberalize the use
8 and dimensions of rooftop structures in those
9 areas currently constrained by the Height Act, OP
10 can submit a proposal that focuses on those areas.
11 Thank you very much.

12 CHAIRPERSON HOOD: Thank you. Next.

13 MR. HARGROVE: Chairman Hood, Members of
14 the Commission, I'm Larry Hargrove speaking for
15 Kalorama Citizens Association.

16 I'd like to direct your attention to the
17 potential effect of penthouse proposals now before
18 you on the city's row house neighborhoods,
19 assessing that potential effect in light of the
20 comprehensive plan.

21 First, as other have already noted the
22 comp plan is replete with precise actions and
23 policies, including some that specifically relate
24 to curtailing penthouses and added storage that
25 make it clear that the scale, character, and

1 architectural integrity of row house
2 neighborhoods, as well as their role in providing
3 housing for larger family households and thus
4 helping to keep young families in the District,
5 all of this is to be protected.

6 These provisions of the plan collectively
7 constitute a sort of action program by which this
8 protection is to be achieved. More extensive list
9 and texts of relevant comp plan provisions is
10 attached to our written remarks. I'll not review
11 that orally.

12 The comp plan's program for protecting
13 row house areas was a response to the following
14 considerations. First, in the 1958 Zoning
15 Regulations the rules for R-4 and R-5 districts
16 largely imposed substantially higher heights and
17 greater densities than were reflected in the row
18 house neighborhoods as they were actually built.
19 This zoning made them especially attractive
20 targets for redevelopment, either by mass
21 demolition or by addition of marketable space to
22 individual buildings by expansion upward or
23 outward.

24 Secondly, expansive redevelopment of
25 individual buildings is peculiarly destructive in

1 row house neighborhoods. That's because a
2 thoughtless change in the mass of one row house
3 can automatically both directly diminish the
4 livability of its adjacent neighbors and rupture
5 the integrity of the row itself.

6 Finally, in the decades following 1958
7 the market has increasingly incentivized pop-up
8 developers to exploit these gaps between zoning
9 standards and row house neighborhoods as actually
10 built with destructive effects that have now
11 reached something like epidemic proportions.

12 Now, as to the penthouse proposals before
13 you, as of now I think it is fair to say that
14 their potential implications for R-5
15 neighborhoods, at least R-5-B and above, are
16 radically at odds with the full range of comp plan
17 objectives for row house neighborhoods.
18 Specifically they could offer pop-up developers
19 the following irresistible incentive as a matter
20 of right for any interior R-5-B or higher row
21 house.

22 A penthouse, 10 feet high and as wide as
23 the house itself, providing up to several hundred
24 square feet of prime marketable apartment space.
25 You know if it's a great view, access to a private

1 roof deck.

2 This would be done without any sacrifice
3 of allowable FAR. It would be an FAR freebie. If
4 experience with existing pop-up projects is any
5 guide, the result will often be a project that
6 first adds at least one story and possibly as many
7 as three to get up to the 50 foot height limit.
8 It will then build out horizontally if necessary
9 to fill out the full zoning envelope, and then it
10 will add another 10 foot story with the penthouse.

11 With the finished project towering above
12 the rest of the row, like a big one-fingered
13 salute to the neighborhood and destroying the
14 architectural and visual integrity of the row and
15 impairing neighborhoods' light, air, and privacy.

16 Bear in mind that this is exactly what
17 developers have done without the incentive of the
18 added marketable space in a penthouse. So we know
19 whereof we speak.

20 So what needs to be done to avoid these
21 damaging effects in the R-5 area? It needs three
22 things. Extend to all of R-5 row houses that
23 prohibition on habitable space in penthouses that
24 now applies to R-5-A and lower. Secondly, hold
25 penthouse height in all of R-5 and R-4 row houses

1 to 10 feet, eliminating the 20 foot matter of
2 right and special exception options. And finally,
3 require one to one setback from adjoining side
4 walls of row houses as required by the
5 comprehensive plan.

6 Now let me say a word about this side
7 setback issue. The comp plan provision requiring
8 setback from adjoining sidewalls of row houses and
9 semi-detached houses has been in the plans since
10 2006. It has been simply ignored by OP in the
11 drafting of regulations since the early days of
12 ZRR.

13 We understand that OP doesn't like this
14 proposal because it would make impossible for a
15 very narrow row house even to have a penthouse for
16 stairway access to the roof. To this let me say
17 three things. First, with the greatest respect,
18 the fact that a comp plan provision is not loathed
19 by OP is not a good reason for that comp plan
20 provision to be ignored.

21 Second, there are very good reasons for
22 the rule that is called for by the comp plan
23 having to do with the geometry and optics in row
24 house situations. And thirdly, if it is thought
25 that every row house owner must have access to the

1 roof via a stairway, provision can be made to
2 accommodate very narrow row houses by some sort of
3 special exception arrangement.

4 Finally, let me note that the original
5 proposal contained a provision making certain step
6 in the direction of favoring historic properties
7 as far as side setback is concerned. That
8 proposal has now been watered down to the point
9 where it is relatively -- a relatively -- it
10 requires side setback in the case of an adjacent
11 historic property, only if that property is lower
12 than the property on which the penthouse is to be
13 erected. And we would urge that the original
14 proposal, which was a step in the right direction,
15 be restored.

16 Thank you very much.

17 CHAIRPERSON HOOD: Okay. Thank you.

18 Next.

19 MS. ATEN: Good evening. My name is
20 Carol Aten and I'm speaking on behalf of the
21 Committee of 100 on the Federal City.

22 Let me start by reiterating what Mr.
23 Lawson noted, was that there is nothing in the
24 recent amendment to the Height of Buildings Act
25 that requires the city or the Zoning Commission to

1 take any action. It's an authorization, not a
2 requirement.

3 In addition there's nothing in the
4 history of the amendment that suggests the
5 amendment was contemplated to apply except where
6 buildings are already at Height Act maximums, the
7 downtown.

8 With that in mind we have two major
9 objections to the proposed penthouse regulations.
10 One, changes are being proposed without the proper
11 planning. And two, changes are being proposed for
12 areas not currently at Height Act limits.

13 Our first objection is that these changes
14 are being proposed in opposition to and without
15 appropriate changes to the comprehensive plan, a
16 number of which have been discussed already.

17 In fact, changes are being proposed
18 without any discernible planning that considers
19 the potential impacts of penthouses on
20 infrastructure, transportation, street light,
21 density, aesthetics, or neighborhood character.
22 Why enact zoning changes before such planning is
23 done and when a comprehensive plan revision
24 process is to begin soon? What's the big rush?

25 The proposed penthouse provisions are an

1 open invitation to the perverse effects of the law
2 of unintended consequences. Let's require that
3 the proper planning be done first.

4 Our second objection is that these
5 changes are being proposed for areas of the city
6 that are not at height maximums. Areas where
7 regular zoning is the appropriate method for
8 changing allowable heights; areas that have been
9 limited in height for reasons of scale and
10 density, not because of any Height Act
11 restrictions. And in fact areas in which the
12 comprehensive plan suggest that the height should
13 be lowered.

14 Even though penthouses are currently
15 allowed in these areas the newly allowed uses will
16 create incentives for larger structures where
17 currently they are only as big as required to fit
18 mechanicals.

19 No convincing case has been made for the
20 need, value, or benefits of these changes except
21 for developers, by developers. The touted
22 contribution to affordable housing feels like a
23 cynical ploy to make us all feel like something
24 good will come out of this, but it's likely to be
25 minimal at best. No changes in height or use

1 should be allowed in areas that are not at Height
2 Act maximums.

3 In addition to these two major objections
4 there are a number of issues that should be
5 addressed by policy and planning. For example,
6 what are the public policy objectives for the use
7 of rooftops that the penthouse regulations
8 address, and how do penthouses relate to other
9 public policy objectives.

10 Mr. May asks, what are we trying to
11 achieve with penthouses? And all of the
12 discussions during the hearings about the Height
13 Act were about unsightly mechanicals, and suddenly
14 we're talking about having these across the city.

15 We currently have incentives for
16 communicable recreation space, an amenity that is
17 particularly important in some areas of the
18 proposed expanded downtown, like Noma, where the
19 absence of such space is notable. Also we have
20 policies encouraging sustainability with green
21 roof, solar panels, and storm water management.
22 Adopting this proposal changes the incentive
23 structure giving developers the opportunity to do
24 something profitable versus something that serves
25 the public interest.

1 Should the economic incentives to build
2 habitable penthouses trump these other beneficial
3 uses as is likely if the decision is left to the
4 developer as a matter of right.

5 What are some of the impacts related to
6 scale? Twenty feet on top of a 50 foot building
7 is much different than 20 feet on top of a 90 foot
8 building. A PUD in a 50 foot zone could add 15
9 feet for the PUD and another 20 feet for a
10 penthouse, totaling 85 feet. These increases are
11 significant since they would usually occur in
12 areas that abut lower residential areas and the
13 ability to monetize the space means the penthouses
14 will be larger and more prominent. What kinds of
15 adverse effects might these increases in height
16 and mass have on nearby residential areas,
17 including reduction of light and air, visual
18 intrusion, increased noise, parking demands,
19 change in neighborhood character, and loss of
20 privacy to name a few.

21 With the additional two stories an
22 increased FAR incentivized teardowns of low-rise
23 apartment buildings they are more likely to be
24 affordable now than any new construction would be
25 that would replace them.

1 Is it fair to neighborhoods to allow
2 penthouses as a minor modification to already
3 approved PUDs after all the agreements have been
4 made why should developers be able to add two
5 stories and new space without any consultation?
6 Unless the penthouse space is within the approved
7 FAR this represents a major change and should
8 require appropriate reviews.

9 These are a few of the issues and I've
10 noted a few others in my written testimony, but
11 they illustrate that some good planning should
12 precede their adoption. We should be able to make
13 informed choices about uses and scale based on
14 real information. Even the then director of the
15 Office of Planning told congress during the Height
16 Act hearings that the federal height should remain
17 in place unless the District completes an update
18 to the District elements, the comprehensive plan.

19 The office of planning has laid out an
20 appropriate and legally required process. Why is
21 it being ignored? Why are ill-considered
22 proposals being rushed in to execution? The
23 bottom line is there is no urgency, there are too
24 many unanswered questions that require more
25 planning, and residents and the city council

1 should be able to address the desirability of
2 habitable penthouses through the comprehensive
3 plan amendment or revision process.

4 Consequently the Zoning Commission should
5 defer action on penthouses until proper planning
6 has been done and the comprehensive plan revisions
7 have been completed. Thank you for the
8 opportunity to present our views.

9 CHAIRPERSON HOOD: Okay. Again, I want
10 to thank you all for your testimony and let's see
11 if we have any comments or questions up here.
12 Anybody? Commissioner May.

13 MR. MAY: I have a comment. I mean, and
14 I'm not sure whether this is going to -- whether
15 I'm really asking for a response or not. But what
16 I'm hearing here is almost two entirely different
17 debates. From the development community we hear a
18 lot -- or at least for the ones who were
19 represented here tonight, we heard a lot about the
20 benefits of taking advantage of the changes in the
21 Height Act for high rise concrete construction
22 buildings.

23 And everything that I've heard here
24 tonight is very much -- in the second panel, is
25 focused almost entirely on low-rise residential

1 neighborhoods. And you know, it's almost like
2 there's two different sets of regulations, or two
3 different cases that are involved here.

4 And I find it kind of frustrating because
5 surely there are aspects to what are being
6 proposed here that people on this panel might
7 support, particularly when it comes to high rise
8 buildings. But I heard almost no mention of those
9 things.

10 And even when there were things that I
11 heard people grant some grudging support for, it
12 was really just grudging support. It wasn't --
13 it's like you're not even seeing that there is
14 potential benefit to the city to taking advantage
15 of this Height Act change.

16 So I would ask that it -- I mean, of
17 anyone here, I mean, is there anything that's in
18 the proposed regulations that you would actually
19 support? I mean, I hear all the reasons and the
20 things that you don't like, and I understand those
21 and we're going to have to grapple with that. But
22 isn't there something in this where you think that
23 there could be some positive to the city,
24 encouraging rooftop communal recreation spaces on
25 high rise apartment buildings, incentivizing some

1 level of affordable housing. I mean, any of these
2 things have value from our perspective?

3 And I mean, I don't want everybody to
4 answer that but if anybody wants to volunteer an
5 answer I'm interested in hearing it.

6 MS. ATEN: I don't think the case has
7 been made.

8 MR. MAY: For anything?

9 MS. ATEN: You can sort of abstractly say
10 yes, it would be nice to have communal recreation
11 space, but what we're hearing from the developers
12 about the additional affordable housing that's
13 going to be provided and the record we already
14 have of IZ and the Housing Production Trust Fund
15 doesn't build a lot of confidence that we're going
16 to see a lot more affordable housing out of this.
17 And to --

18 MR. MAY: Well, we have that same concern
19 too. So all right, then --

20 MS. ATEN: So to what end?

21 MR. MAY: -- I'd like somebody else to
22 try.

23 MS. ATEN: We have party space and
24 housing.

25 MR. MAY: Yeah, I mean, I heard --

1 MS. ATEN: For rich people.

2 MR. MAY: -- all the negative and I just
3 heard it again. So, anybody else want to venture
4 out into a positive; a potential benefit that
5 might come from this?

6 MS. GATES: I'm speaking for myself.

7 MR. MAY: Sure.

8 MS. GATES: As you will recall, I was on
9 the Zoning Task Force and when we talked about
10 height, and we talked about penthouse, mechanical
11 penthouses, I thought that a uniform rooftop was
12 not a bad thing. But I wasn't imagining it as
13 livable space.

14 I also think I wasn't thinking of it as
15 18 and a half feet of just space up there. I
16 don't have a problem with recreational space on
17 rooftops. I do have a problem with restaurants
18 that might have live music.

19 I think, you know, we're really looking
20 at a lot of unintended consequences here. There
21 are things about rooftop use that do make sense in
22 very practical terms. But in the sense of this is
23 just for developers because they need more money -
24 -

25 MR. MAY: Well, I don't think we're

1 really interested in doing anything for that
2 reason either.

3 MS. GATES: Thank you.

4 MR. MAY: The question is whether there
5 is, in the incentives that are now potentially
6 there, are there benefits that can be gained. And
7 I mean, I'm not hearing that anybody at the table
8 right now sees any potential that --

9 MS. GATES: Well, I also --

10 MR. MAY: -- can be gained. It's all
11 about simply maintaining the status quo. Not that
12 that's a bad thing in itself. I mean it's a
13 perfectly reasonable position. It's just that,
14 you know, we have this opportunity and I do
15 believe there is substantial comprehensive plan
16 guidance that we can rely upon. Maybe not
17 specifically saying, you know, we should do X, Y,
18 and Z with occupiable penthouses. But there's
19 certainly other policies that are relevant to this
20 discussion.

21 So I don't feel constrained by not having
22 specific comp plan guidance on it. I'm just
23 looking for something, some -- you know, what is
24 the positive. What can you gain from the
25 potential that this offers?

1 MS. RICHARDS: Well, Mr. May, who doesn't
2 like to go out on a roof deck at some point, or a
3 terrace. And to the extent that we're talking
4 about terraces and enjoy the spring night air, you
5 know, that's fine. That's a little different from
6 like habitable space.

7 So I think that we have enough --

8 MR. MAY: When you say different from
9 habitable, I mean that is by definition habitable
10 space. You mean by like having penthouse -- like
11 apartments?

12 MS. RICHARDS: Right. It's --

13 MR. MAY: Okay.

14 MS. RICHARDS: Okay. So why don't we
15 look at the kind of existing rooftop terraces that
16 people are using and see like where they are first
17 of all, and how well they function and what kind
18 of neighborhoods they're in, because no one seems
19 to object to those and people like them. I like
20 them.

21 We have a number of roof top restaurants
22 already in the city. Or at least there are
23 terraces where people can go out. I don't know if
24 they're permanent restaurants or not. Maybe
25 they're not but they have tables out there. So I

1 think that -- and they seem to be, you know,
2 filled with throngs of young people. So I think,
3 you know, go see like where they are. How many
4 problems do they cause? What are the amenities
5 that they're bringing?

6 So I mean, that's a place to start. But
7 that's not kind of not what we're getting. We've
8 got this whole Megillah. Like let's just have
9 offices and let's have, you know, apartment --
10 residential units, and let's have this and that,
11 so it's kind of everything at once, all at once,
12 potentially everywhere.

13 And so that's just a bit much to kind of
14 wrap your head around. So if we saw a proposal
15 that said, okay, here are some nice limited uses
16 like recreational, you know, or terrace, then
17 maybe we could kind of like begin to think about
18 this in a more, I guess, broadminded light.

19 MR. MAY: Okay. Thank you. I appreciate
20 that. That's enough for me, thank you.

21 CHAIRPERSON HOOD: Any other questions or
22 --

23 MS. COHEN: Yeah. I just think that
24 Commission May brought up an excellent point about
25 seeing if we can in some way see any positive

1 feedback. But the one question I would have for,
2 you know -- I don't need it from everybody, but
3 even in a row house district, and especially in
4 certain neighborhoods where you don't have that
5 much outdoor space in the back of your home, would
6 you actually -- I'll ask you, Mr. Hargrove, have a
7 problem with your neighbor having a rooftop deck
8 that met these standards?

9 MR. HARGROVE: No, personally I wouldn't.
10 I think roof decks are fine. I have a roof deck
11 on my own row house. But that doesn't really go
12 to the heart of the problems that we can
13 anticipate from the options that are available for
14 row house districts in this proposal.

15 I don't think anybody objects just to a
16 roof deck. And I certainly personally wouldn't
17 object to a roof deck served by a stairway
18 enclosed by a penthouse if it's properly set back.
19 As I said in my remarks, even for a narrow row
20 house where it wouldn't be possible there are ways
21 to accommodate that situation by permitting a
22 penthouse exclusively for stairway access. It
23 would be no bigger, or no wider, or taller than
24 necessary to meet the construction code
25 requirements for that stairway.

1 If I can go back to Commissioner May's
2 question, in the case of my organization at any
3 rate, we've not expressed opposition to the
4 proposals generically. We've not really had the
5 energy to focus on issues that were addressed, for
6 example, by the representatives of the development
7 community here before us. You only get five
8 minutes at most before the Zoning Commission and
9 you need to --

10 MR. MAY: But you can write more, you
11 know? You can write more.

12 MR. HARGROVE: Right. But I would
13 imagine that were we to explore the issue there
14 would not be objection in our organization to
15 communal recreational space on buildings that have
16 been built to the Height Act limit and property
17 setback and property designs. What we have an
18 interest is residence of the district and being
19 sure that they're not ugly or not any uglier than
20 they have to be. I don't think there would be
21 objection to that sort of thing.

22 MS. MCDANIEL: Mr. May --

23 MR. MAY: I just want to respond to that.
24 You know, I actually think that would be very very
25 helpful because again, to have everybody just come

1 forward and say, well it's not -- you know, none
2 of this supported in the comp plan and these are
3 the things that are going to be terrible for R-4
4 and R-5 neighborhoods. I mean, we understand
5 that. It's worth saying that. But also to speak
6 up to the things that actually are positive. It's
7 like, you know, the same -- you know, I issued a
8 challenge of sorts to the development community
9 about helping us try to figure out how to improve
10 inclusionary zonings. I mean, I would appreciate
11 hearing from your group about the potential
12 positives that you might see for other areas of
13 the city, maybe not, you know -- well, certainly
14 what would be good for your neighborhood is
15 important. But if you have thoughts on these
16 other areas that would be great.

17 I mean, you have so much experience
18 living in the city and you've seen it change so
19 much over the years, having that input, I think,
20 would be very valuable and would give us another
21 perspective on the issues. Like I said, you know,
22 we've had hearings on almost two separate subjects
23 here tonight, so having other input on that first
24 subject would be good.

25 MR. HARGROVE: I would say to that, that

1 we would want to temper our comments about things
2 that are happening on other people's turf by being
3 sensitive to the comments that have been made
4 about the relationship between the comp plan and
5 that kind of development.

6 While of course we're sensitive to the
7 relationship between the comp plan and what is
8 proposed for our particular area, I can't address
9 that because we haven't looked into it, but I
10 gather from some of the remarks here that it is
11 felt that the comp plan does not provide an
12 appropriate basis for a lot of what is proposed in
13 this case.

14 MS. RICHARDS: If I may? I think it's
15 possible to synthesize what may be regarded as two
16 kind of polar arguments here. I think like we're
17 seeing the development community has very little
18 interest or a subordinated interest in low density
19 and medium density areas, and a very strong
20 interest in high rise neighborhoods. And of
21 course we're here to very strongly protect the low
22 to medium density areas. So I mean, that's -- and
23 the Office of Planning has actually given, you
24 know, an option for kind of carving out the low to
25 medium.

1 So you really could, I mean in a very
2 crude way, you know, split the baby. But I think
3 that that's still pretty crude and it doesn't
4 address some of the larger issues about, you know,
5 the intent of the legislation, the pendency of the
6 comp plan. But it does give you a way to start
7 thinking, like let's sweep some things off the
8 table and then maybe go from there.

9 MS. SIMON: In our written testimony we
10 did actually mention communal recreational areas
11 on rooftops and a carve out for that.

12 MR. MAY: Yours was very thorough in that
13 regard. I appreciate that.

14 MS. SIMON: Yeah.

15 MR. MAY: I tried to qualify it by saying
16 that not everybody, but anyway.

17 MS. SIMON: But we also, where we have a
18 lot of low density, R-2, R-1-A, R-1-B
19 neighborhoods right butting up against C-2-A, C-3-
20 A neighborhoods, C-3-A zones, and so you get to
21 the C-3-A zone which is designated either moderate
22 or medium, depending upon whether you're talking
23 about the home plate lot or the fresh field slot.

24 If you start adding 20 feet to those with
25 free FAR, that has a big impact on the single

1 family houses a block away. And that is our
2 concern.

3 MS. COHEN: It's okay. I think this is
4 valuable. But because this hearing is going to be
5 available for people in the future, I just want to
6 make one, what I see is misinformation. And that
7 has to do, Ms. Sellin, with Berry Farm.

8 I know you probably read the newspaper
9 cover to cover, but --

10 MS. SELLIN: No, I went to the NCPD
11 hearings on that.

12 MS. COHEN: Well, I have to -- I have
13 been there many years ago when I was on the
14 Housing Authority and it was very distressed
15 dilapidated housing that I don't like seeing
16 people live that way. The reason why it's going
17 to be mixed income, and there's a one for one
18 replacement that's required by the Commissioners
19 of the Housing Authority, is because again the
20 complicated financial layering that's needed to
21 make a property that is very low income, work.
22 People at Berry Farm probably make less than 30
23 percent of median income. Some only make social
24 security. So you need that core subsidy.

25 So I just wanted, for the record, to

1 state that because I really do believe that there
2 are reasons we need higher income housing in
3 certain neighborhoods, and that's to be able to
4 cross-subsidize.

5 We don't have, as was mentioned, the
6 amount of subsidy needed to just subsidize very
7 low income people and we don't want to isolate
8 them. So that's kind of what I just wanted to
9 mention for the record.

10 MS. SELLIN: Well, we are losing a great
11 number of working people who are policemen,
12 teachers, young people, and I don't see that the
13 way that IZ is working now is keeping those people
14 in town, and we need them. And --

15 MS. COHEN: I agree with you so any
16 suggestions --

17 MS. SELLIN: -- so a big problem. And I
18 think one of the things that distresses me is that
19 moderate income housing is used an excuse in all
20 zoning cases now a days, PUDs and everything, to
21 give the developers everything they want. And
22 there's -- and I don't see that it's creating that
23 much housing. So it's a real problem.

24 MS. COHEN: I think that's why we're
25 going to be revisiting IZ, and I think any kind of

1 suggestions you have would be appreciated as, you
2 know, Commissioner May asked the development
3 community. Obviously we're asking everybody for
4 that kind of assistance.

5 MS. SELLIN: Well, Mr. Glasgow made a
6 very good point in the fact that we only have 100
7 million in the housing fund and that's less than
8 one percent of our budget.

9 MS. COHEN: Exactly. And I think
10 everybody who represents a group would be very
11 helpful in bringing that to everybody's attention.
12 Thank you.

13 CHAIRPERSON HOOD: Okay. Mr. Turnbull.

14 MR. TURNBULL: Thank you, Mr. Chair. I
15 guess I kind of agree with Commissioner May. I
16 sort of see this panel as the protector of
17 everything under 50 feet. It's like that's a
18 sacrosanct level and that's the character of --
19 that's the neighborhood that really needs the
20 protection and you're really concerned about how
21 some of these regulations got effective.

22 Mr. Hargrove, you even heard there, a
23 couple of people were talking about a 20 foot
24 penthouse to accommodate an elevator, which on a
25 50 foot building really makes a significant

1 difference. So I would agree with you.

2 So I think we did have a polarization.

3 Not a polarization but I think we had a group here
4 that's really concerned about residential
5 neighborhoods, more so than the developer group
6 before you that was more concerned with the high
7 rise. So I think there is going to be a balance,
8 and I think whatever -- it's already been said,
9 whatever comments you can make to add to your case
10 already, I think would be very good.

11 I think we're concerned. We're concerned
12 about the IZ, the way it is right now. We're also
13 concerned about the neighborhoods. And some of us
14 are very concerned about the row houses and what
15 could impact them. So we will be looking at that
16 as we go forward.

17 But thank you for your testimony tonight.

18 CHAIRPERSON HOOD: Commissioner Miller.

19 MR. MILLER: Thank you, Mr. Chairman. I
20 appreciate each of your testimony this evening,
21 and I think you've made some good points. And as
22 Ms. Richards said, I mean the OP proposal already
23 does have options in it which began to distinguish
24 between having more restrictive provisions for 50
25 feet or less, and so we can look at even -- we can

1 be evaluated, and OP can be evaluating whether
2 even more restrictions should be applied, if we're
3 going to go with that kind of already bifurcated
4 approach.

5 And I think you make some good points
6 about the comprehensive plan language, and I think
7 we are going to need, from the Office of Planning,
8 some comprehensive planning analysis as
9 Commissioner May alluded to, the general objection
10 -- there might not be specific provisions because
11 this Federal Height Act amendment wasn't made.
12 But there are certainly plenty of general
13 provisions. Yes, talking about increasing the
14 supply of housing is one of them. That is a civic
15 priority in the comprehensive plan. This is
16 habitable penthouse additional space. Maybe it
17 shouldn't be in -- maybe it shouldn't be as much
18 allowed in the C-3-A, C-2-A, and R-5-B as it is --
19 it's proposed that way in some cases, but maybe it
20 needs more restrictions.

21 But there are comprehensive plan
22 provisions that would support, but I think we do
23 need analysis to balance out your analysis, which
24 was very helpful, if we're going to proceed with
25 this from the -- we're going to need that analysis

1 from the Office of Planning and I think there are
2 provisions there.

3 And I would just say this, in the matter
4 of fairness in terms of quoting the former
5 Director of Planning's comments that the limits
6 would stay in place, the existing Federal Height
7 Act limits would stay in place until there was a
8 comprehensive planning process. You conveniently
9 left out the context that what the Office of
10 Planning's proposal was, no Federal Height Act
11 limits. Their proposal wasn't the 20 foot
12 habitable penthouse space. Their proposal was no
13 Federal Height Act limits, let the city, let the
14 Office of Planning or with the community, come up
15 in the comprehensive plan with where the area
16 should be, and then let the local D.C. Zoning
17 Commission apply -- that that guidance from the
18 comprehensive plan.

19 So I think it's a bit of a stretch to say
20 that nothing should happen until the comp plan is
21 changed, was not applying to this very limited --
22 this other proposal that went forward from NCPCN
23 from the congress. That's just my own opinion.
24 I'm sure many at the table might disagree with
25 that. But you look like you want to comment,

1 which I would be happy to have you comment, Ms.
2 Gates.

3 MS. GATES: That quote was taken directly
4 from her testimony to congress.

5 MR. MILLER: Oh, I know. I know. And
6 her testimony was in favor of no limits. No
7 federal limits.

8 MS. GATES: She told Congress one thing,
9 and we're sitting here tonight looking at
10 amendments.

11 MR. MILLER: But do you understand what
12 I'm saying? Her proposal was no Federal Height
13 Act limits. That got rid of the 100 and, you
14 know, the existing limits all together. So it's
15 out of context. I understand that that's what her
16 testimony was, that there would be a comprehensive
17 planning process. But it was in the context of a
18 proposal that called for no limits whatever in
19 federal law, and then letting the local law, which
20 would be the comp plan, determine that. That's my
21 only point.

22 CHAIRPERSON HOOD: Okay. I would
23 associate myself, and I'm not going to belabor it,
24 I would associate myself with the comments of Mr.
25 Turnbull. The first panel we had two different

1 tales of the city, I believe, so to speak. And I
2 would think that we're going to have to find that
3 balance and I'm looking forward to deliberating.

4 But I will ask this question, and I want
5 to ask this panel, pretty much know everybody
6 sitting at this panel and I've come up with -- we
7 have a representative from Ward 1, 3, and 7. Did
8 I miss a ward?

9 MS. MCDANIEL: Five.

10 CHAIRPERSON HOOD: Oh, you live in 5? I
11 didn't know that. I'm even happier now. No,
12 actually I probably -- but you know what? You've
13 made my night. Okay. One, three, five, and
14 seven. Okay.

15 Well, since you live in Ward 5, that
16 negates the rest of my question. No, actually --
17 Ward 2?

18 Okay. But let me ask this question, and
19 I asked this when we first dealt with this, and
20 the same question, where is everybody? Is it that
21 it's not an interest? Are they happy with what's
22 taking place? Are they happy with what maybe the
23 Office of Planning is doing such a spectacular job
24 because they sent it out to the ANC and I know
25 there are some alternatives in the language? But

1 is it -- and we've been through this with the Z.R.
2 I'm not as concerned now because I think we've
3 exhausted getting things out and getting people.
4 But it seems like the same people come and test on
5 all these issues. And I'm not negating it or
6 knocking it because we do need to hear from that,
7 hear from you all. But where is everybody else?

8 MS. SELLIN: I think, the notice is 40
9 pages. ANCs deal with sometimes 10, 12 issues in
10 a session. They can't deal with the language. It
11 is very obtuse.

12 CHAIRPERSON HOOD: So you think it needs
13 to be simplified?

14 MS. SELLIN: And there are many
15 complicated --

16 CHAIRPERSON HOOD: Right.

17 MS. SELLIN: -- suggestions in this
18 that's very hard to digest for people who don't
19 know zoning.

20 CHAIRPERSON HOOD: Okay.

21 MS. SELLIN: I think even the placards
22 for zoning changes are difficult for the layman to
23 understand. They're not in other cities, by the
24 way. They're in pretty plain language. But it's
25 a real mountain to climb, 40 pages of a lot of

1 possibilities.

2 CHAIRPERSON HOOD: So to some degree the
3 interest will probably be getting sound bites.

4 And here's the reason I'm asking this
5 question, because I also live in the city. I
6 don't come from anywhere else. I live right here
7 in the city. And when I'm going down the street
8 and the word does get out, Hood, what are you all
9 doing? And they don't say Anthony, they don't say
10 Mr. Chairman, it's Hood. What are you all doing?
11 What are you all down there passing?

12 But most of the time it's after the fact.
13 And I've talked to my own ANC in Ward 5, to try to
14 get people to come down and get engaged because as
15 I said earlier, the zoning affects our lives. And
16 I just wonder -- and I know the outreach for me is
17 an issue. It seems like I know that the Office of
18 Planning has done outreach. I know what the
19 Office of Zoning is doing. It's not like -- and I
20 know what I do personally. I'm not sure what my
21 other colleagues do, but I'm sure they probably
22 mention stuff that we could talk about. And let
23 people know that, hey look, we are down here
24 having hearings. And I know everybody is not able
25 to make it. If you can write us something let us

1 know. Let us know what your views are. And
2 that's kind of what I try to always try to push
3 out there.

4 And I understand -- and please, don't
5 take this wrong. I appreciate everyone that comes
6 down because if it had not been for this group
7 here, we would not have had the other side of it.
8 Other side of the coin.

9 MR. GAMBRELL: I'd like to offer at least
10 one theory about who is here. I know some of my
11 R-4 colleagues feel like they've done pretty well
12 under the Office of Planning proposals for R-4, so
13 I think that was one reason they didn't come out
14 because they felt like they were in good hands.

15 And there is a lot of complexity in the
16 regulations that are being proposed that really,
17 frankly, scared a lot of people. But I'm going to
18 take this opportunity with the microphone on to go
19 ahead and respond to Commissioner May's plea for
20 something positive from the panel. And I would
21 say that I think everybody can benefit from, as
22 far as floor area ration is concerned, if it's
23 habitable space, no matter where it resides in the
24 house, count it. It's to everyone's benefit to
25 have that level of clarity, and right now we don't

1 have that. And we especially don't have it when
2 it comes to regulation of this FAR with DCRA.
3 Thanks.

4 CHAIRPERSON HOOD: Okay.

5 MS. SIMON: I want to add to that because
6 counting it is also very important because that's
7 how we do our planning. Right now we are adding
8 allowable FAR to the zoning envelope randomly
9 around the city. OP has no idea where this FAR is
10 going to manifest itself. So they can't plan for
11 where it's going to happen.

12 CHAIRPERSON HOOD: I think, let me just
13 say this before the next person wants to tell us
14 to count it, I think that's understood. That's
15 understood from this panel, you want it counted.
16 Okay? So I'm just making sure everybody don't
17 have to comment on FAR being counted. Is that
18 safe for me to say?

19 Okay. So I think we got that. Yes.

20 MS. ATEN: I think I might add that when
21 you look at those maps, as people responding, the
22 suggestion is that the height of penthouses going
23 down from 18 and a half to 10 feet in all the
24 yellow areas. And so a lot of people who have
25 looked at those maps said, oh that's a good thing,

1 without sort of thinking through the implications
2 of their adjacent purple areas. So.

3 CHAIRPERSON HOOD: Okay. That's a good
4 point. Okay. Any other questions or comments up
5 here?

6 MR. MAY: Well, and just to add to that I
7 think one of the things that people didn't
8 appreciate is the fact that while we're saying
9 only 10 feet, there is the potential to introduce
10 a substantial incentive for people to build that
11 10 feet where they didn't have it before. And we
12 understand that very keenly, but that was not
13 obvious to everybody.

14 MS. SELLIN: One thing the Office of
15 Planning did not do, though I think they knew
16 about it in the, at least the R-4 case, was that
17 90 percent of the buildings in R-4, at least in
18 the mid-city area, are under 40 feet;
19 substantially under 40 feet. And there was no
20 calibration of the difference between the allowed
21 zoning and what the actual buildings were, which
22 would permit huge additions in some cases.
23 Particularly in R-5. R-5-C as well. And we
24 didn't have that kind of study to look at. We
25 looked at our own buildings, I did, and I realized

1 how drastic this could be in many cases.

2 MR. MAY: I'm pretty sure --

3 MS. SELLIN: To the row houses.

4 MR. MAY: I'm pretty sure that was
5 covered in the R-4 case.

6 MS. SELLIN: It was in the R-4.

7 MR. MAY: Right.

8 MS. SELLIN: But not in R-5 and it's --

9 MR. MAY: No, no, no, but I mean, the R-4
10 --

11 MS. SELLIN: -- quite drastic.

12 MR. MAY: -- case was about R-4
13 neighborhoods. We didn't talk about the R-5
14 neighborhoods yet.

15 MS. SELLIN: But in R-5 it's quite
16 drastic actually, and that was not calibrated.

17 MR. MAY: Right.

18 CHAIRPERSON HOOD: Any other questions or
19 comments? Okay. I want to thank this panel. We
20 appreciate you coming down and providing
21 testimony.

22 Okay, Commissioners, as we move forward
23 to go to our questions of the Office of Planning,
24 I know we've exhausted a lot but I will tell you,
25 we do have a number of letters for the record from

1 different groups within the file. I won't go
2 through that. We do have a number of ANCs who
3 have commented. And a lot of it is tweaking and
4 suggestions of how we can deal with some of the
5 actions before us.

6 Okay. So that would cover some of the
7 reports that we have not spoken about
8 specifically, but they are in the records, a
9 couple of ANCs, we do have some testimony from
10 other individuals who have testified. We do have,
11 as mentioned earlier, NCPC report, supplemental
12 Office of Planning report, and as mentioned
13 already, some additional ANCs.

14 So are there any questions left for the
15 Office of Planning, actually? Commissioner May?

16 MR. MAY: Yeah, I've been thinning down
17 my list of -- my long list of questions, and I'm
18 not sure though, are we -- at this point I think
19 there may have been some further information that
20 was implied that we wanted from the Office of
21 Planning, such as the comprehensive plan look and
22 things like that.

23 So I'm happy enough to sort of mention
24 the issues that I'm keenly interested in, and I
25 think it might be just as easy for the Office of

1 Planning to address those on paper if we're asking
2 for something supplemental.

3 CHAIRPERSON HOOD: I think we all will,
4 and I'm sure that Office of Planning took good
5 notes of some of the comments, because I do want
6 to hear some responses. Especially with DCBR.
7 But anyway, let me let you go --

8 MR. MAY: All right. So I mean, I don't
9 have to have answers to these things immediately,
10 but there are a couple of issues that were raised
11 in the NCPC letter that were of concern to me.
12 The Pennsylvania Avenue 160 foot height maximum,
13 and how all penthouse functions are within that
14 160 feet maximum. And I'm interested in hearing
15 what you think should happen on Pennsylvania
16 Avenue or how we might address that concern. And
17 of course we know that there is some -- there is
18 some statutory support for what was done by PADC
19 in their plan, but I don't claim to know how all
20 that works together with local zoning.

21 The other NCPC issue was the setback
22 relief, the recommendation that setback relief
23 should only be possible below the Height Act
24 height, and I thought that was something that was
25 explicit in your previous recommendations. Is

1 that not the case?

2 MR. LAWSON: That is the case and
3 unfortunately NCPC did not discuss this with us
4 before they filed that, which would have been --

5 MR. MAY: Okay.

6 MR. LAWSON: -- helpful. But that is the
7 case.

8 MR. MAY: Okay. I thought it was, but it
9 was not apparent in the most recent reports that
10 you had provided to me, or to us.

11 The letter we received from the Secret
12 Service, I agree that is a very serious
13 consideration and we should be -- I think maybe
14 there does have to be a special treatment in the
15 areas in proximity to the areas that they're
16 concerned about. And I'm not sure how we get to
17 that, but maybe it would be good for the Office of
18 Planning to meet with NCPC and the Secret Service
19 about that and try to figure those things out.

20 And the last, this is just a smaller
21 question, which is that if we were to subject
22 additional space in, you know, habitable space in
23 penthouse to parking regulations, or parking
24 requirements, what does that mean for existing
25 buildings that might want to expand their

1 penthouse, and do we have to include a provision
2 that addresses whether, you know, if you're adding
3 habitable space in penthouse, should that be
4 exempt from the parking regulations because it's
5 hard to add more parking under a big office
6 building or something like that?

7 MR. LAWSON: We could certainly take a
8 look at that. Of course, if you add space to any
9 building, whether it's in the penthouse or not,
10 and it's nonconforming to parking, you need to get
11 parking relief. So that wouldn't be outside the
12 parameters of what is currently --

13 MR. MAY: Got it.

14 MR. LAWSON: -- the case.

15 MR. MAY: Okay.

16 MR. LAWSON: But we'd be happy to take a
17 look at that further and --

18 MR. MAY: I'm not suggesting we need to
19 do anything special in this circumstance, but
20 again, we want to have the right -- we want to
21 incentivize the right things, and then we want to
22 make those incentives actually work and not have
23 other obstacles that come up in the process.

24 MR. LAWSON: Understand.

25 CHAIRPERSON HOOD: Any other questions or

1 comments? Vice Chair?

2 MS. COHEN: Yeah, I thought I had asked
3 that your housing person look at Eric Smart's
4 submission and have some comments back from their
5 perspective. Especially with regard to some of
6 the assumptions because that was a little bit out
7 of my experience to date.

8 And then going ahead, if we do decide for
9 certain alternative dues, if we do decide to go
10 ahead and ask for -- have special exemptions, what
11 are some of the conditions they'd have to meet? I
12 guess I was -- I didn't see any guidance on that.
13 I just wanted to see how burdensome that may or
14 may not be.

15 CHAIRPERSON HOOD: Okay. Any other
16 questions or comments? Commissioner Turnbull.

17 MR. TURNBULL: Thank you, Mr. Chair. I
18 guess one of the things that we heard loud and
19 clear from the last panel was that again, if we're
20 going ahead with all of this and we get to some
21 point where we're going to decide, one of the
22 things that nobody is agreeing on is -- nobody
23 likes is the idea that a modification to an
24 existing PUD regarding habitable space is on the
25 consent calendar. And I think we heard pretty

1 clearly that this needs to be a -- you go through
2 the modification process. That there is issues
3 that need to be looked at.

4 Just a comment.

5 CHAIRPERSON HOOD: A comment that at
6 least I agree with. Any other comments? Okay.
7 Okay. That's fine. No, you go ahead. I like to
8 go last. So hopefully I can close out.

9 MR. MILLER: Okay. Well, I think --
10 well, on that last comment I'm not sure I do
11 agree, at least for the high rise buildings. And
12 I think OP proposed a number of safeguards which
13 ensures that the ANC is consulted and that we have
14 an opportunity to go through the public hearing
15 process, I think for the lower rise -- this
16 bifurcation idea that I think that that makes
17 sense, that that may not be appropriate at that
18 point on the consent calendar.

19 So I was going to ask that OP also, in
20 addition to what Commissioner May and the specific
21 comments that he asked for, I would like OP to
22 respond to the -- in writing, I guess. I think
23 you responded the last time verbally, to the issue
24 that Goulston Storrs raised about the
25 institutional uses and they think that language is

1 still needed to accommodate the institutional uses
2 in the penthouse space, where it goes through a
3 process at the BZA or here at the Zoning
4 Commission.

5 So that's one area of response. And then
6 the other one that they raised, which was raised
7 in testimony here tonight as well, was that the --
8 your response to their comment, which I agree
9 with, that the communal and recreational space
10 shouldn't trigger the housing linkage requirement,
11 making sure that it's commercial uses that would
12 trigger the housing linkage requirement in that
13 Section 414.2.

14 And I guess I would be interested in your
15 responses to adding more restrictions in the whole
16 50 feet or less area to try to address the
17 concerns that we heard from the last panel. And I
18 also wanted to hear the responses to the specific
19 language revisions and tweaks that were requested
20 by DCBIA and Holland and Knight to hear -- to know
21 where you are; where you stand on that.

22 And I think we do need some kind of
23 comprehensive planning analysis from the Office of
24 Planning because I don't think in the four reports
25 -- I think it's four reports from you, thus far I

1 don't think we have any. So I think it's
2 important given the extensive comprehensive
3 analysis we got from the last panel, which was
4 very extensive. We need something there. So,
5 that's --

6 MR. LAWSON: Yeah. If I may? The
7 comprehensive plan analysis is always in the first
8 OP report.

9 MR. MILLER: Uh-huh.

10 MR. LAWSON: So that's in our report
11 dated July 24th --

12 MR. MILLER: Okay.

13 MR. LAWSON: -- 2014.

14 MR. MILLER: Thank you for directing us
15 to that.

16 MR. LAWSON: I'd just like to, if I can -
17 - sorry, Mr. Chair. If I can just get some
18 direction on one of your other comments regarding
19 responses to additional restrictions in the low-
20 density zone. You've already advertised options
21 that would limit penthouse to 10 feet, that would
22 not permit habitable space, and would limit it to
23 one story. Are you looking for additional
24 restrictions beyond those?

25 MR. MILLER: Well, I guess I was looking

1 for the -- when Ms. Richards maybe called the
2 crude bifurcated approach, that if we went that
3 way, the counting the FAR in one case and up to a
4 limit but not counting it in the high rise case.

5 MR. LAWSON: Understand.

6 MR. MILLER: That's so there was --

7 MR. LAWSON: I understand your point.

8 MR. MILLER: -- the bifurcated
9 restrictive crude approach, if we're going to
10 proceed.

11 MR. MAY: Can I add to that? I think one
12 of the things that this whole discussion triggered
13 for me is that, you know, we've been looking at 50
14 feet as some sort of a dividing line, and I'm
15 thinking that maybe it's not the right dividing
16 line, because when you think about adding a
17 penthouse of at least 15 feet so that you can have
18 an elevator going up, you know, on top of a 50
19 foot building, that's a really significant
20 difference.

21 I know that there are reasons why that
22 might be necessary and there are ways we probably
23 have to do that, but we might want to treat it
24 differently from how a 15 foot or an 18 foot
25 penthouse might go on top of a 90 foot building.

1 And so, you know, when you're getting into those
2 higher rise buildings I think that's where we're
3 getting to the first part of this discussion,
4 where it's about rooftop recreation and
5 potentially some more housing units. Whereas down
6 the lower end we're mostly concerned about the
7 potential impacts of this free FAR, if you will,
8 or this potential FAR, additional FAR starts to
9 have significant impacts.

10 So I think some look at what the right
11 number is. I mean, maybe it is 50 feet in the
12 end, but you know, maybe it's as high as 90 feet.

13 CHAIRPERSON HOOD: Okay. Anything else?
14 Mr. Lawson, let's talk about the penthouse design.
15 I'm trying to remember. The alternative one to
16 the -- the alternative one which requires the
17 walls of an enclosed penthouse should be of equal
18 height, and then the alternative to it is to
19 delete the requirement that all penthouse walls be
20 of equal height.

21 And then my question is more or less the
22 additional alternative. That wasn't advertised,
23 was it?

24 MR. LAWSON: It was not.

25 CHAIRPERSON HOOD: Okay. So that came in

1 -- how did we get the additional because --

2 MR. LAWSON: As we looked at what was
3 advertised, as we looked further at preparing our
4 final analysis, we wanted to put that option out
5 there so that you would have that opportunity to
6 discuss it. As we noted the Commission made it
7 very clear that they were open to and receptive to
8 receiving additional comments and we felt that
9 this was one that might address some of the
10 concerns and the issues that had been raised.
11 There were concerns remaining about that
12 relationship between mechanical space and
13 habitable space and trying to minimize the impact,
14 the visual impact of a penthouse. We felt this
15 may be one way that would address that better than
16 either of the other two options. And it really is
17 pretty much a tweak of the options that were
18 advertised.

19 CHAIRPERSON HOOD: Okay.

20 MR. LAWSON: You know, it addresses the
21 same kinds of issues, and we wanted to put that
22 out there so that if people wished to comment on
23 it they could, and if the Zoning Commission felt
24 that it had merit that you could discuss it.

25 CHAIRPERSON HOOD: Obviously we did some

1 research and found out other jurisdictions may use
2 that model. Is that the case or --

3 MR. LAWSON: Yeah. We spent a lot of
4 time looking for other jurisdictions that regulate
5 penthouses and there is very little out there.
6 And that makes sense, you know. In most
7 jurisdictions, most jurisdictions don't have the
8 Height Act limit that we've got. So it's just
9 frankly not an issue in most places.

10 I found a few communities that kind of
11 nipped around the edges of what happens in a
12 penthouse. Certainly lots of communities have
13 regulations pertaining to upper story setbacks or
14 you know, or things like that. But in terms of
15 regulations that are direct relevant to the kind
16 of complexity that we're particularly talking
17 about now, I didn't find any.

18 CHAIRPERSON HOOD: Okay.

19 MR. MAY: Did you look at Alexandria?

20 MR. LAWSON: We looked briefly at
21 Alexandria, yeah.

22 MR. MAY: Okay. Because I know they have
23 some regulations.

24 MR. LAWSON: They do have some.

25 MR. MAY: Yeah. And they're more

1 restrictive than ours.

2 MR. LAWSON: They seem to be generally.

3 MR. MAY: Yeah.

4 MR. LAWSON: They were a little
5 confusing, so.

6 MR. MAY: I'll admit to having been
7 confused by them myself. But I'm generally aware
8 of them because of the property interests that the
9 Park Service has in that area, which believe it or
10 not gets into that. So.

11 CHAIRPERSON HOOD: Okay. So I didn't
12 know the Park Service got into -- well, I guess
13 so.

14 MS. COHEN: They're everywhere.

15 CHAIRPERSON HOOD: Yeah, they're
16 everywhere. Are they down in Haynes Point,
17 straightening that out?

18 But anyway, all right. Any other
19 questions up here?

20 All right. No other questions, office of
21 planning. Do we know what we all have asked for?
22 I think that's on the record pretty much. Do we
23 need to rehash that? I don't think we do. I
24 don't think we do. Do you have something that we
25 might have not have discussed with the Office of

1 Planning, Ms. Schellin?

2 MS. SCHELLIN: Not with the Office of
3 Planning but I think it was -- I mean, I'm unclear
4 about who specifically -- other than, I have Mr.
5 Bolen, Mr. Collins, and Mr. Hargrove specifically
6 that you guys requested additional information.
7 And I know Mr. Miller asked for some additional
8 comments from them.

9 Is there anybody else you wanted
10 additional comments from?

11 CHAIRPERSON HOOD: Mr. Williams asked to
12 give us additional comments.

13 MS. SCHELLIN: Lindsley Williams. Mr.
14 Williams.

15 MR. MAY: Your Honor, can I ask a
16 question? I mean, is this all about whether we
17 close the record?

18 MS. SCHELLIN: Yes.

19 MR. MAY: So, I'm --

20 MS. SCHELLIN: Or do you want anybody who
21 testified be able to provide --

22 CHAIRPERSON HOOD: We're going to
23 actually leave the record open for two weeks.

24 MS. SCHELLIN: Two weeks?

25 MR. MAY: Yeah.

1 MS. SCHELLIN: Okay. For anybody? Okay.

2 CHAIRPERSON HOOD: That way, we don't
3 want to just have four and then not allow other
4 people to comment.

5 MS. SCHELLIN: Okay. Because that's what
6 I was unclear about. So then that would put it to
7 May 11th, 3:00 p.m., and then I think so OP would
8 have an opportunity to review those additional
9 comments. Then they could have until 3:00 p.m.
10 June 1st to submit their supplemental report and
11 then we can put this on the Commission's June 8th
12 agenda for consideration.

13 CHAIRPERSON HOOD: Okay.

14 MR. MAY: Is that the likely date that we
15 would take up the R-4 case? Because that record -
16 - if the record closes on that, or the comment
17 period closes on June 1st.

18 MS. SCHELLIN: That is correct.

19 MR. MAY: So I'm not sure that I would
20 want to undertake both of these in the same night
21 because I think they're going to be lengthy
22 discussions. I mean, maybe I'm wrong but that is
23 just a final action of course. So maybe I am
24 wrong on that.

25 CHAIRPERSON HOOD: I think we've already

1 had the lengthy discussion.

2 MS. SCHELLIN: Yeah.

3 MR. MAY: Yeah, we already had that.

4 CHAIRPERSON HOOD: Unless somebody wants
5 to change their mind, then we can do that.

6 MS. SCHELLIN: It's just, it's final
7 action on the other one.

8 MR. MAY: Oh, no. I think about this
9 stuff all the time.

10 MR. TURNBULL: Commissioner May is right,
11 we still have more discussion to talk about it.
12 So, it may take a while.

13 CHAIRPERSON HOOD: On this one or on the
14 R-4?

15 MR. MAY: Oh, no, R-4.

16 MR. TURNBULL: R-4.

17 CHAIRPERSON HOOD: I sure hope it goes
18 better than -- no, I'm just -- okay.

19 MR. MAY: Yeah. I mean, I guess I
20 originally raised that concern. Now that I think
21 about it, if it's final action maybe it's not as
22 much.

23 CHAIRPERSON HOOD: But if those are the
24 only two, and it's hard to tell. If I could do
25 that I --

1 MR. MAY: Yeah.

2 CHAIRPERSON HOOD: -- would play the
3 lottery.

4 MS. SCHELLIN: I can tell you what else
5 is on there so far.

6 CHAIRPERSON HOOD: Yeah. Could you -- is
7 it action packed or?

8 MS. SCHELLIN: We have 0522A, which was
9 the recent View 14 Investments, the recent PUD
10 modification where they wanted to have the animal
11 place.

12 MR. MAY: That's not a big case.

13 MS. SCHELLIN: Yeah, right. That one
14 wasn't. We have the 14-11 which is the pop-ups
15 case. 14-07, final action. That's the 1250 St.
16 Edens. And that's it so far.

17 CHAIRPERSON HOOD: Okay. I think we can
18 handle it but if you all want to do separate days
19 let's just do it now.

20 MR. MAY: I'm okay with going ahead with
21 that agenda if that's all right.

22 MS. SCHELLIN: Okay. So we'll put it on
23 the June 8th agenda, then.

24 CHAIRPERSON HOOD: All right. All right.
25 We're going to go ahead and do it.

1 MS. SCHELLIN: Thank you.

2 CHAIRPERSON HOOD: Okay. Anything else,
3 Ms. Schellin?

4 MS. SCHELLIN: No, sir.

5 CHAIRPERSON HOOD: All right. I want to
6 thank everyone for their participation in this
7 hearing tonight and this hearing is adjourned.

8 (Hearing adjourned at 9:45 p.m.)
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